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No. 93-1223

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1993

SOKAOGON CHIPPEWA COMMUNITY,

*Petitioner,*

v.

EXXON CORPORATION, a corporation chartered in the State of New Jersey; STATE OF WISCONSIN; FOREST COUNTY, a political subdivision of the State of Wisconsin; LANGLADE COUNTY, a political subdivision of the State of Wisconsin; and ONEIDA COUNTY, a political subdivision of the State of Wisconsin,

*Respondents.*

**On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Seventh Circuit**

## RESPONDENT EXXON CORPORATION'S BRIEF IN OPPOSITION

*CHARLES G. CURTIS, JR.
FOLEY & LARDNER
One South Pinckney Street
Madison, Wisconsin 53701-1497
(608) 257-5035

DAVID E. BECKWITH
DAVID LUCEY
FOLEY & LARDNER
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-5367
(414) 271-2400

**Counsel of Record*

*Attorneys for Respondent Exxon Corporation*

60pp

## COUNTERSTATEMENT OF THE QUESTIONS PRESENTED

1. Were the Sokaogon Chippewa Community's so-called "rights of occupancy *per se*" in northeastern Wisconsin extinguished upon the creation of the reservations promised in the Treaty with the Chippewa of September 30, 1854, 10 Stat. 1109, a treaty to which the Sokaogon's predecessors were parties?

2. Was summary judgment appropriately granted against the Sokaogon given that the Sokaogon's predecessors clearly were parties to the 1854 treaty; that the Sokaogon's claim cannot be reconciled with the treaty's plain language; that the claim is at odds with the negotiating history, the surrounding circumstances, and the parties' subsequent construction; and that the claim is grounded upon inadmissible hearsay, innuendo, and conjecture?

## LIST OF PARTIES AND RULE 29.1 LIST

The names of all parties to the proceeding in the Court of Appeals appear in the caption of this case. Exxon Corporation has no parent. It holds an interest in numerous entities which are not wholly owned subsidiaries; a complete list of those entities appears on pages 17-30 in the supplemental appendix to this brief in opposition.

On September 13, 1993 (after the Court of Appeals had decided this case), Exxon Corporation conveyed its property interests involved in this litigation to a newly formed Wisconsin general partnership, Crandon Mining Company ["CMC"]. *See* page 1, note 1 below. The following additional information may therefore be pertinent: Crandon Mining Company has four partners—(1) Rio Crandon Inc. and (2) Northwoods Resources Inc., both of which are wholly owned subsidiaries of Rio Algom Limited; and (3) Crandon Mining Company, Inc. and (4) Exxon Minerals Development Corporation, both of which are wholly owned subsidiaries of Exxon Corporation. CMC has no subsidiaries. The undersigned counsel represent CMC as well as Exxon Corporation.

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## RESPONDENT EXXON CORPORATION'S BRIEF IN OPPOSITION

The respondent Exxon Corporation, by its undersigned counsel, respectfully requests this Court to deny the petition for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit for review of the judgment in *Sokaogon Chippewa Community v. Exxon Corporation*, 2 F.3d 219 (CA7 No. 92-3920, Aug. 12, 1993, *rehearing denied*, Oct. 20, 1993).[1]

## TREATY PROVISIONS INVOLVED

The full texts of the Treaty with the Chippewa of October 4, 1842, 7 Stat. 591, and the Treaty with the Chippewa of September 30, 1854, 10 Stat. 1109, are set forth on pages 5-8 and 9-16, respectively, of the supplemental appendix to this brief in opposition.

## COUNTERSTATEMENT OF THE CASE

The Sokaogon would have this Court believe that the courts below ignored the relevant historical evidence. (Pet. 9-10.) Nothing could be further from the truth. The District Court and the Court of Appeals issued thoughtful, scholarly opinions that are grounded upon a massive body of historical documentation. This evidence includes thousands of pages drawn from relevant judicial and Indian Claims Commission files; federal, state, and tribal

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[1]As indicated in the Rule 29.1 List, Exxon has, since the Court of Appeals decided this case, conveyed its property interests involved in this litigation to a newly formed Wisconsin general partnership, Crandon Mining Company ["CMC"]. Exxon continues to have a stake in this litigation because (a) it holds a 50% indirect ownership interest in CMC, *see* Rule 29.1 list; and (b) the Sokaogon is seeking damages "for the entire period of dispossession" from the mid-19th century to the present, which would include the period of time that Exxon held title, *see* Second Amd. Cpt., *ad damnum*, R. 36.

In light of the recency of this conveyance, the late stage of this litigation, and Exxon's continued stake in the outcome, neither Exxon nor CMC has thought it necessary to move for a substitution of parties pursuant to this Court's Rule 35. (The undersigned counsel also serve as counsel for CMC.) All counsel of record were advised of this conveyance in September 1993.

archives; and a variety of published and unpublished primary and secondary sources dating from the 1840s through to the present day.[2] The lower courts' opinions also rest on a comprehensive set of 243 detailed, heavily annotated, *uncontroverted* proposed findings of fact. (*See* R. 91, hereinafter cited without cross-reference as "Findings."[3]) The Sokaogon's claim cannot be reconciled with this 150-year body of evidence.

**A. The Nature And Scope Of The Sokaogon's Claim.**

At stake in this case are the rights to "occupy" and "inhabit" 144 square miles of land in northeastern Wisconsin. The location of this so-called "subject territory" is shown in Illustration 1 in the supplemental appendix to this brief; a legal description appears in Findings ¶ 1.[4] The United States granted these lands to the State of Wisconsin and various private parties during the mid-19th century; the lands now are held by hundreds of public, corporate, and individual owners. (Findings ¶¶ 2-12.)

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[2]These materials include a wealth of relevant petitions, correspondence, memoirs, affidavits, depositions, and federal investigative reports from the 1840s through the 1970s. The evidence is reprinted in six volumes appearing at R. 92-96 and 116, and is summarized at length in Exxon's proposed findings of fact (R. 91). The Sokaogon has conceded the authenticity and admissibility of all of this evidence. (*See* App. 80-81; Sokaogon Seventh Circuit Br. at 29.)

[3]The Sokaogon failed to take issue with these proposed findings of fact. Instead, after having been given all of the additional time it had requested to evaluate and respond to this evidence—much of it drawn from the Sokaogon's own archives—the Sokaogon ignored Exxon's proposed findings and submitted three pages of proposed findings of its own, most of which were supported by few if any evidentiary citations. (*See* R. 110.) The Sokaogon's proposed findings did not attempt to join issue with the overwhelming majority of Exxon's proposed findings; those that did were comprehensively addressed and refuted in R. 114. The District Court cited several dozen of Exxon's proposed findings (*see* App. 21-22, 28, 31); both courts below clearly relied on these proposed findings *sub silentio* throughout their opinions.

[4]The Sokaogon and its predecessors have never defined the location, size, or contours of the "subject territory" with any consistency. (*See*

*(Footnote continued on following page)*

The Sokaogon has a small reservation within the subject territory which was established for its benefit in 1939 by an executive order issued pursuant to § 7 of the Indian Reorganization Act of 1934, 25 U.S.C. § 467. (Findings ¶¶ 13, 241-243.) In addition, the Sokaogon has a treaty-protected "privilege" to engage in off-reservation "usufructuary" activities—hunting, fishing, gathering, and the like—on certain *public* lands. *See* Article 2, Treaty with the Chippewa of October 4, 1842, 7 Stat. 591;[5] *see also Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Voight* ["*LCO I*"], 700 F.2d 341, 362-365 (CA7), *cert. denied*, 464 U.S. 805 (1983); *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin* ["*LCO II*"], 760 F.2d 177, 178-183 (CA7 1985). The federal courts have held that these usufructuary privileges may not be exercised on private property,[6] and that they also must give way to mining development in cases of conflict. (The whole purpose of the 1842 treaty was to open northern Wisconsin and the Upper Peninsula of Michigan up to mining development; it was known as the "Miner's Treaty"; the Chippewa consistently acknowledged in the years thereafter that they were required under the 1842 treaty "to give place to miners,"

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*(Footnote continued from previous page)*
Findings ¶¶ 137-147.) Indeed, as the District Court observed, the Sokaogon offered two completely different definitions of the subject territory during the course of this litigation alone—one of which (in the original complaint) totally excluded Exxon's property, the other of which (in the Second Amended Complaint) was adjusted to include that property in its entirety. (*See* App. 51; Findings ¶ 146; *see also* Illustration 2 in the supplemental appendix.)

[5]That article provides in relevant part that "[t]he Indians stipulate for the right of hunting on the ceded territory, with the other usual privileges of occupancy, until required to remove by the President of the United States . . . ."

[6]*See LCO I*, 700 F.2d at 365 n.14; *LCO II*, 760 F.2d at 182-183. The final, unappealed judgment in the *LCO* litigation—a judgment binding on the Sokaogon under basic rules of *res judicata* and collateral estoppel —holds that the Chippewas' 1842 treaty rights "have been terminated as to *all portions* of the ceded territory that are privately owned as of the times of the contemplated or actual attempted exercise of those rights." 775 F. Supp. 321, 323 (WD Wis. 1991) (emphasis added).

"remove [to] one side" for mining development, and "not stand in the way of the miners."[7])

Neither the Sokaogon's 1939 reservation rights nor its 1842 treaty usufructuary privileges are at issue in this case. Instead, the Sokaogon here contend that—unlike any of the dozens of other Chippewa bands that were parties to the Treaty with the Chippewa of September 30, 1854, 10 Stat. 1109—it may ignore the reservation system established by the 1854 treaty and instead continue to exercise "rights of occupancy *per se*" anywhere within its "aboriginal and historic home zone of habitation"—even on private lands like Exxon's.[8] The Sokaogon defines these "rights of occupancy *per* se" as "the sheer right to inhabit a place"; it demands "immediate possession of all portions of the subject land occupied or claimed by any defendant," along with damages "for each portion of the subject territory held by any defendant to the exclusion of the plaintiff."[9]

This claim to "occupy" and "inhabit" the "subject territory" grows out of a century-old dispute between the Sokaogon and the federal government involving the Sokaogon's legend of a "lost reservation," to which we now turn. (Findings ¶ 85.)

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[7]Findings ¶¶ 48, 52, 63; *see generally id.* ¶¶ 38-54, 61-67. *See also United States v. Bouchard*, 464 F. Supp. 1316, 1337 (WD Wis. 1978) (the Chippewa understood through the 1842 treaty "that their occupation of certain parts of the territory would be ended to make way for mining and logging operations"), *rev'd on other grounds sub nom. LCO I*; and the District Court's detailed analysis below at App. 19-20, 69-73.

[8]*See* App. 2, 9; Cpt. ¶ 14, R. 1; R. 94, p. 23.

[9]*See* Second Amd. Cpt., *ad damnum*, R. 36; *see also* Sokaogon Seventh Cir. Br. 9, 13. The dramatic scope and implications of this claimed "right to inhabit" are extremely ill-defined, but according to the Sokaogon it includes the right not to be "excluded by fence, published or posted restriction" from enjoying "free movement" through the subject territory; "the right to camp for whole seasons"; "the right to erect and maintain habitations"; and access to certain specific sites historically associated with tribal assemblies, ceremonies, and burials (none of which are anywhere identified as being on Exxon's lands). (*See* R. 116, p. 11; R. 108, p. 9.)

**B. The Sokaogon's "Lost Reservation" Legend.**

The Sokaogon's predecessors belonged to a Chippewa (more properly, "Anishinabe" or "Ojibwa") tribal division known as the "Chippewas of Lake Superior," which consisted in the mid-19th century of several dozen "bands" scattered throughout the Upper Peninsula of Michigan, northern Wisconsin, and northeastern Minnesota. (Findings ¶¶ 14, 158 n.77.) The principal Chippewa "village-trading post clusters" in the vicinity at issue in this case were located at Lac du Flambeau (about 75 miles to the northwest) and L'Anse (in Michigan's Upper Peninsula about 100 miles to the northeast).[10] The Sokaogon's predecessors consisted of two bands that were offshoots of the much larger Lac du Flambeau and L'Anse communities; they numbered only about 200 in population at the time of the 1854 treaty.[11]

The Sokaogon's predecessors were known variously through the years as the "Post Lake bands," the "Pelican Lake band," the "Rice Lake Chippewa," the "Mole Lake band," the "Lake Bands," and the "Lost Band." (*See* App. 18.) They had their principal villages in the mid-19th century along Post Lake, which lies at the western end of the subject territory, and Pelican Lake, which lies beyond the western border of the territory now being claimed. (Findings ¶¶ 15, 17; *see also* Illustration 1 in the supplemental appendix to this brief.)

It is undisputed that the Sokaogon's predecessors were parties to the 1842 treaty under the "Lake Bands" designation. The 1842 treaty extinguished Native American title to lands legally

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[10]*See, e.g., Atlas of Great Lakes Indian History*, p. 146 and Map 27 (H. Tanner ed. 1987); R. 94, p. 659.

[11]*See* App. 3, 9. The leading contemporaneous account, written by a Chippewa, reported in the early 1850s that various "families" had "branched off" from the Lac du Flambeau community and "had commenced to shoot forth new branches or communities." One of these offshoots was identified as "the Pelican Lake band"—the Sokaogon's predecessors. W. Warren, *History of the Ojibwa People* 192, 314-315 (1885, reprinted 1984) (R. 94, pp. 413, 422). Part of the Sokaogon also originated in the Upper Peninsula of Michigan and emigrated to northeastern Wisconsin in the early 1840s. (*See* Findings ¶¶ 16, 223, 233-235.)

known as "Royce Area 261" (*see* Illustrations 3 and 4 in the supplemental appendix) and ceded the area to the United States, subject to the provision in Article 2 that "[t]he Indians stipulate for the right of hunting on the ceded territory, *with the other usual privileges of occupancy*, until required to remove by the President of the United States . . . " (emphasis added). The various Chippewa bands initially continued to live throughout the ceded territory, but President Zachary Taylor revoked their "privileges of occupancy" in 1850 and ordered them to remove to Minnesota. Attempts to carry out the removal provoked an outcry from the Chippewa and sympathetic whites; a delegation of Chippewa chiefs traveled to Washington, D.C. in 1852 and reportedly secured President Millard Fillmore's promise to revoke his predecessor's order. (*See* App. 22-24; Findings ¶ 20.)

The solution to this unsettled state of affairs, as embodied in the 1854 treaty, was to abandon the "removal" policy and instead allow the scattered bands of Lake Superior Chippewa to remain in the region while "colonizing," "concentrating," and "confining" them upon a series of small reservations where, it was hoped, they would abandon their traditional lifestyles and adopt white agricultural methods. (Findings ¶¶ 21, 75-83, 148-161; *see also* pages 17-19 and 24-25 below.) Several bands received reservations of their own, while the others were assigned to larger residual reserves. Three residual reserves were established in Wisconsin: what is now known as the Bad River Reservation, created "[f]or the La Pointe band, *and such other Indians as may see fit to settle with them*," and the Lac du Flambeau [hereinafter "LDF"] and Lac Courte Oreilles [hereinafter "LCO"] reservations, set apart "*[f]or the other Wisconsin bands*." (1854 Treaty, Art. 2 §§ 2-3, emphasis added; *see* Illustration 4 in the supplemental appendix.)

It is undisputed that the Sokaogon's predecessors, then known as the "Post Lake" bands, were represented at the September 1854 treaty negotiations in La Pointe, Wisconsin, by Chiefs Megee-see ("the Eagle") and Ne-gig ("the Otter"). The treaty was styled as a "contract" between the "United States" and the sev-

eral dozen chiefs and headmen who signed on behalf of their bands, and who agreed collectively to "hereafter be known as the Chippewas of Lake Superior." (Arts. 12-13.) Chiefs Me-gee-see and Ne-gig were among the eleven signatories who placed their sealed marks in the "Lac Du Flambeau" subgrouping of the "Chippewas of Lake Superior." As parties to the treaty, Me-gee-see, Ne-gig, and their bands thereby became entitled to reside on the reservation to be established at Lac du Flambeau (less than 75 miles northwest of Post Lake), or to live on the Bad River or LCO reserves if they preferred. The treaty made no mention of a separate reservation for the "Post Lake" Chippewa, by that or any other name.

The Post Lake Chippewa thereafter recognized that they had rights on the LDF reservation. As the Court of Appeals summarized the historical record:

> "Some of the petitions acknowledge that under the treaty the Post Lake bands were to be treated as part of the Lac du Flambeau band and thus entitled to live on its reservation. They say such things as 'we have a share in the Flambeau reservation'; '[the Post Lake bands] respectfully ask that they may be united with the Bands of Chippewa Indians at Lake du Flambeau . . . just as soon as their Great Father will furnish them the necessary facilities to go to farming'; 'we do not want to move to the Lake Flambeau reservation to which we were apportioned by the treaty of 1854.' " (App. 7; *see also* Findings ¶¶ 24-26.)

The Post Lake bands also were initially counted in with the LDF bands in receiving their annual treaty annuity payments at La Pointe. According to an 1879 petition from them, however, in the late 1850s they held "a council with the Flambeau indians, in which they agreed to divide our payments, & let us draw our share at L'Anse Lake Superior [in the Upper Peninsula of Michigan], as this would be nearer to us" than La Pointe. (Findings ¶ 23; *see* Illustration 4 in the supplemental appendix.) Federal officials acquiesced in this division, and the Post Lake Chippewa thereafter had virtually no contact with the La Pointe Indian

Agency, which was responsible for the Wisconsin Chippewa bands, and instead were ranked within the jurisdiction of the Mackinac Indian Agency, responsible for the Chippewa bands of the Upper Peninsula. (Findings ¶ 23.)

By about 1860, Chiefs Me-gee-see and Ne-gig had begun to claim that they had "rec'd encouragement" from one or more federal officials that they could have their own reservation "in the vicinity of Post Lake." (*Id.* ¶¶ 28, 112.) Their claim continued to be repeated in oral traditions recounted by "several of our old members around Council fires" and "handed down from generation to generation." (*Id.* ¶ 85.) According to these traditions, the then-Commissioner of Indian Affairs, George W. Manypenny, had taken Me-gee-see and Ne-gig aside during the 1854 negotiations and told them "that we would have a reservation in the vicinity of Post Lake, where we could fish, gather Rice & make sugar"; Manypenny made this promise "in order to induce our chiefs of our 2 Bands to sign the treaty," and they had done so on that understanding. (*Id.* ¶¶ 91-92.) Thereafter, the traditions continue, an unidentified federal official visited Me-gee-see "sometime circa 1855-1870," reconfirmed that the Post Lake bands were entitled to their own reservation under the 1854 treaty, and prepared two copies of a "map and other paper" describing the allegedly promised lands, one set of which was left with Me-gee-see and the other taken by the agent "to be made out in regular form and recorded" in Washington. (*Id.* ¶¶ 86, 98.) The agent and his set were lost, the traditions continue, in a shipwreck on the Great Lakes; Me-gee-see's set was stolen by an Indian trader named Billie Johnston. (*Id.* ¶¶ 86, 98-99.) According to the Sokaogon, "[s]everal years afterwards Johnson [*sic*] was taken seriously ill and being advised by his physicians that death was inevitable recollection of this stolen paper came to mind. He then sent word to a friend of his by [the] name of Strauss to whom he entrusted the safekeeping of this treaty [*sic*] . . . ." (*Id.* ¶ 99.) What Mr. Strauss in turn ever did with the "stolen paper" is unknown, because *he* supposedly "committed suicide on a train between Antigo and Clintonville Wis." in either "1896 or 97."

(*Id.* ¶ 106.) The Sokaogon subsequently accused its own lawyers during the 1940s of having stolen the allegedly "lost map" and of refusing to return it; the tribe's counsel denied having any such document, and nothing further ever came of the claim. (*Id.* ¶ 110.)

The full, fascinating, frequently conflicting details of the Sokaogon's "lost reservation" tradition are set forth in Findings ¶¶ 84-147. *See also* App. 5-7, 12, 27-28.[12] Three points are sufficient for present purposes:

*First*. The "lost reservation" tradition rests upon a demonstrably erroneous factual assertion—that Commissioner Manypenny induced Chiefs Me-gee-see and Ne-gig to sign the 1854 treaty through oral assurances that they would receive their own separate reservation. The uncontroverted evidence shows that this could not possibly have happened because Manypenny was not even *present* for the September 1854 treaty negotiations in La Pointe. (Findings ¶¶ 91-93, 151-161.)

*Second*. During the 1860s and 1870s, local federal Indian agents repeatedly characterized the Post Lake bands as falling within the "other Wisconsin bands" provision in Article 2, § 3 of

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[12]We mean no disrespect toward what has obviously been an important legend within the Sokaogon's culture for a century or more, but it must be noted that anthropologists and historians have emphasized that "great caution must be exercised before placing trust" in the factual content of Native American oral traditions—a caution that obviously applies to the oral legends of frontier white culture as well. H. Hickerson, *The Chippewa and Their Neighbors: A Study in Ethnohistory* 33 (1970) (*reprinted in* R. 94, p. 341); *see also* D. Brown, *Bury My Heart at Wounded Knee* xi-xii (1970) (some Native American accounts retold to whites were "tall tales and shaggy-dog stories," and such accounts "must therefore be read with skepticism, although some of them are masterpieces of irony and others burn with outbursts of poetic fury"). One historian who is extremely sympathetic to the Chippewa has noted that claims to allegedly promised reservations were sometimes "an example of Chippewa negotiating style." J. Clifton, "Wisconsin Death March: Explaining the Extremes in Old Northwest Indian Removal," *reprinted in* R. 95, pp. 1021, 1024 n.87. (The final version of this article is published in 75 *Transactions of the Wisconsin Academy of Sciences, Arts and Letters* 1-39 (1987).)

the 1854 treaty and as therefore having rights on the LDF or LCO reserves, *not* in the subject territory. (*See id.* ¶¶ 184, 188-189, 191-195.) From Washington, the Office of Indian Affairs unequivocally rejected the Post Lake bands' requests for a separate reservation, instructed them to move to the LDF reserve, and held that "[t]his Department is bound to respect the [1854] treaty as it finds it and can recognize no other reservation than that specified." (*Id.* ¶ 200.)

*Third*. The federal government repeatedly sought during these years to remove the Post Lake bands from the area and to resettle them either on the LDF reservation or on the L'Anse (also known as "Keweenaw") reservation in Michigan's Upper Peninsula. (*See generally id.* ¶¶ 162-200.)[13] These efforts were unsuccessful because the Post Lake Chippewa did not, in the words of one of their petitions, "want to move to the Lake Flambeau reservation to which we were apportioned by the treaty of 1854." (*Id.* ¶¶ 24, 199.) Although the government did not respond with force, these Native Americans remained in the Post Lake vicinity, as the Office of Indian Affairs put it, "without authority" of the United States. (*Id.* ¶ 200.)[14]

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[13]As noted on pages 7-8 above, in the late 1850s the Post Lake Chippewa had been transferred at their own request to the jurisdiction of the Mackinac Indian Agency, responsible for the L'Anse and other Upper Peninsula Chippewa. Several Mackinac agents thereafter thought it would be most expedient for the Post Lake Chippewa to settle on a reservation within Mackinac's jurisdiction. (*See* Findings ¶¶ 189, 197-198.) Even while offering the Post Lake bands the option of moving to "Keweenaw bay" as a matter of administrative convenience, however, the Mackinac Agency confirmed that "[b]y the terms of the treaty of September 30, 1854, 3d clause, article 2d, lands were set apart for them, and other bands, at Lac De Flambeau and Lac Court Oreilles." (Findings ¶ 188.)

[14]The federal government's policy at this time—at least in relatively unsettled areas—was "to employ persuasion instead of military force to bring nomadic Indians upon reservations"; forced relocations to reservations were avoided "so long as they [did] not trouble the whites." ("Foreward" to G. Manypenny, *Our Indian Wards* xiii (1880, republished 1972), *reprinted in* R. 94, p. 470; *see generally* Findings ¶¶ 214-220.)

By the late 19th century the Post Lake Chippewa literally had become, as they often were called, a "lost band"—"wanderers on the face of the earth." (*See id.* ¶¶ 15, 32, 222; *see generally id.* ¶¶ 32-33, 221-243; App. 5-7, 29, 61.) Their status was by no means unique. Because of the frontier character of northern Wisconsin, a lack of sufficient government resources and employees, and Native American resistance to abandoning traditional lifestyles, the Lake Superior Chippewa generally did not settle permanently upon their reservations until close to the turn of the century. "Roaming" Menominee, Potawatomie, Winnebago, and Chippewa bands were scattered throughout the unsettled portions of northern Wisconsin in the late 19th century and in some instances even as late as the 1930s. (Findings ¶¶ 216-218.)

The federal government considered using force to remove the Post Lake bands but ruled that option "out of the question," and instead began at the turn of the century to consider purchasing lands for a small separate reservation for them. (*Id.* ¶¶ 31, 35, 214-220, 227-228.) These efforts culminated in 1939 with the creation by executive order of the reservation now held by the Sokaogon. (*Id.* ¶ 35; *see generally id.* ¶¶ 221-243.)

The following year, the Sokaogon (*sub nom.* "Mole Lake Band") sued the United States in the Court of Claims for damages under a special jurisdictional act, contending that it had been "entitled to have set apart to it for the use and benefit of its members" a separate reservation pursuant to the unwritten "intent" of the 1854 treaty; this claim was abandoned in 1953 as having "no support whatever by evidence."[15] The Sokaogon recovered additional compensation from the United States for other claims under the 1854 treaty in litigation before the Indian Claims Commission during the 1960s and 1970s (*see* page 20 and note 21 below), but did not attempt to resurrect its "lost

[15]*See* Findings ¶ 132; *see also Mole Lake Band v. United States*, 126 Ct. Cl. 596, 601 & n.7 (1953); Act of August 30, 1935, 49 Stat. 1049; H.R. Rep. No. 1083 and S. Rep. No. 1208, 74th Cong., 1st Sess. 1-2 (1935).

reservation" claim in those proceedings. *See Sokaogon Chippewa Community v. Wisconsin*, 879 F.2d 300, 301-303 (CA7 1989).

**C. The Proceedings Below.**

The United States was the principal defendant in the initial stages of this litigation (commenced in 1986). The Sokaogon contended that the federal government had either intentionally or negligently violated the unwritten intent of the 1854 treaty by failing to establish a separate Post Lake reservation during the 19th century; it sought either an injunction requiring the United States to "deliver possession of the promised reservation" or, in the alternative, money damages for the federal "taking" of these alleged reservation rights. (*See* R. 1.) The Court of Appeals held in 1989 that all of the Sokaogon's claims against the United States are barred on jurisdictional and statute-of-limitations grounds, but it allowed the claims against the other defendants to proceed. *See* 879 F.2d at 302-305. The Sokaogon has not challenged the United States' dismissal from this litigation.

On remand against the remaining defendants, the Sokaogon shifted to an entirely different theory and argued that the United States *had* in fact established a separate reservation for the Post Lake Chippewa in the early years following the 1854 treaty—a reservation that, while subsequently "lost" to them, had created a "beneficial interest akin to fee title" which had never lawfully been extinguished. (*See* Second Amd. Cpt. ¶¶ 21-25, R. 36; *see also* R. 94, pp. 23, 74.) Exxon demonstrated that no such reservation had ever been intended, promised, or established. (*See generally* Findings ¶¶ 148-243.) As the Court of Appeals put it, the "lost reservation" claim "is at best embroidered (too many ransoms, shipwrecks, lost and stolen maps, and deathbed revelations to be plausible) and at worst fictitious." (App. 6.) The Sokaogon conceded that Exxon had refuted the "lost reservation" claim "in conclusive fashion," and the District Court entered a summary judgment holding that "the Treaty of 1854 did not provide the Sokaogon with a reservation of their own, nor was it intended to do so." (R. 112, pp. 3, 29; App. 47; *see generally* App.

47-52.) The Sokaogon does not challenge this portion of the judgment. (Pet. 8-9.)

Having abandoned its "lost reservation" claim, the Sokaogon shifted its focus once again—this time to the 1842 treaty's "privileges of occupancy" clause. The Sokaogon continued to rely upon its "lost reservation" legend in insisting that the unrealized *intent* of the 1854 treaty was to give the Post Lake bands their own separate reservation. Since that never occurred, the Sokaogon now claim, its 1842 treaty "rights of occupancy *per se*" were never technically extinguished and thus remain in force throughout the subject territory. (*Id.* at 9, 11, 15-16.)

The District Court held that Exxon is entitled to summary judgment on this remaining claim for any one of three distinct reasons:

*First*. Because the Sokaogon's predecessors were parties to the 1854 treaty, their 1842 treaty "rights of occupancy *per se*" in the subject territory were extinguished upon the creation of the Wisconsin Chippewa reservations promised in the latter treaty. (App. 59-60.) The Sokaogon's predecessors were among "the other Wisconsin bands" provided for in Article 2, §§ 2 and 3 of the 1854 treaty, and their refusal to remove to the 1854 treaty reservations in the following decades could not have operated to keep their 1842 treaty "occupancy" rights alive. (*See* App. 55-64.) As for the Sokaogon's 1854 "treaty understanding" argument, the District Court observed that

> "[t]he Sokaogon were not able to refute Exxon's claim that the United States never established, or intended to establish, a separate reservation for them. Yet, by relying on this [treaty understanding] argument, they are asking this court to take as true allegations Exxon already has shown to be speculative at the most. . . . To accept Sokaogon's argument would be to acknowledge that they should have the occupancy rights reserved by the 1842 Treaty until a reservation is established for them, even though they are not entitled to a [separate] reservation." (App. 61-62.)

*Second*. With two minor exceptions, all of the lands in which Exxon holds interests are privately owned. The Sokaogon's at-

tempted exercise of any of its remaining 1842 treaty "privileges of occupancy" upon these lands would therefore squarely be barred by *LCO*'s private lands rule. (App. 64-69.)

*Third*. Exxon acquired its property interests in dispute for the purpose of building an underground zinc-copper mine.[16] Because the uncontroverted evidence demonstrates that mining was intended to take priority over the Native American privileges of occupancy reserved in the 1842 treaty, "the Sokaogon are required to vacate any off-reservation land they have occupied whenever mining commences." (App. 69-73.)[17]

The Court of Appeals affirmed. It reasoned that the Sokaogon's remaining claim boils down to the propositions "that either they were not parties to the 1854 treaty and therefore can continue to assert their rights under the 1842 treaty or that, if they were parties, the treaty does not mean what it says." (App. 5.) The Court of Appeals found that neither of these propositions can be reconciled with the 1854 treaty's language, its negotiating history, the surrounding circumstances, or the parties' subsequent construction. (App. 5-14.)

## REASONS FOR DENYING THE WRIT

### I. IT IS THE SOKAOGON'S CLAIM, NOT THE COURT OF APPEALS' OPINION, THAT IS IN "PATENT CONFLICT" WITH LONG-ESTABLISHED PRINCIPLES OF TREATY CONSTRUCTION.

The Sokaogon asserts that the Court of Appeals' decision "is in patent conflict with century-old principles of treaty interpreta-

[16]Exxon's successor-in-title, Crandon Mining Company, is presently engaged in the process of obtaining the necessary permits and approvals for this proposed mine.

[17]The District Court emphasized that, "[i]f the Sokaogon were to prevent Exxon from mining on the subject territory, it would be in contravention of the very considerations prompting" the 1842 treaty; that treaty "demand[s] that mineral development should take precedence" over the Chippewas' reserved "privileges of occupancy." (App. 70.)

tion." (Pet. 11.) It argues that the court engaged in a "skewed interpretation" which is "at patent variance with the express terms of the 1854 treaty," "does violence" to this Court's precedents, and "open[s] a significant wound to the structure of the law governing Indian treaty interpretation." (*Id.* at 14-16, 19.)

This is completely inaccurate. Both the District Court and the Court of Appeals gave extensive, thoughtful consideration to the canons of Native American treaty construction, emphasizing that "[a]mbiguities and mistakes alike are to be resolved in favor of the Indians," that "Indian treaties are to be interpreted as the Indians themselves would have done," and that the historical record must be treated with caution given the language and cultural barriers between the Chippewa and white people. (*See, e.g.*, App. 7, 10-11; *see also id.* at 36-37.)

It is the Sokaogon's own claim, not the Court of Appeals' decision, that is in conflict with established principles of treaty construction. As the Court of Appeals observed, the Sokaogon's claim rests at bottom on the proposition that "the treaty does not mean what it says"—either because the Post Lake bands were not parties entitled to live on the residual "catch-all" reservations (notwithstanding their chiefs' signatures and the treaty's plain terms), or because the treaty contained a promise "to create a separate reservation" for those bands (notwithstanding that neither the treaty nor any other government document "so much as hints at any such promise"). (App. 5-6.) To get around the treaty language, the Sokaogon has attempted to invoke an array of conjecture, surmise, hearsay, rumor, and innuendo which is flatly contradicted by the uncontroverted historical record; internally contradictory and implausible; and cannot be reconciled with the 1854 treaty language itself. Although *reasonable* doubts are to be resolved in favor of Native Americans, "even Indian treaties cannot be rewritten or expanded beyond their clear terms to remedy a claimed injustice or to achieve the asserted understanding of the parties." *Choctaw Nation v. United States*, 318 U.S. 423, 432 (1943). *See also United States v. Choctaw Nation*, 179 U.S. 494,

538, 541 (1900) (a court may not "disregard the obvious import of the words employed" or "giv[e] to an Indian treaty a meaning not justified by its words").

The Sokaogon's claim also conflicts with established summary judgment standards. Although the petition protests "the injustice of denying these people a trial on their grievance" (Pet. 20), the Sokaogon failed below to demonstrate that there was anything to *try*. The Sokaogon did not attempt to controvert Exxon's detailed findings of historical fact; it relied instead upon inadmissible hearsay, conjecture, and surmise; and it failed to come forward with any expert testimony in support of its claims. As the Court of Appeals emphasized, Exxon, on the other hand, "presented an interpretation of the treaty that was sensible, consistent with and indeed implied by its language, . . . consistent with all reasonably substantiated facts concerning the circumstances in which the treaty had been negotiated and signed," and consistent with "[t]he treaty's purpose, as could be gathered from its words and logic and structure and the background circumstances, and for that matter the subsequent history up to the creation of the Sokaogon's own reservation in the 1930s." (App. 11.)

A party resisting summary judgment "must set forth *specific* facts showing that there is a *genuine* issue for trial." Fed. R. Civ. P. 56(e) (emphasis added). Both of the courts below carefully reviewed the massive historical record and found that, "even when taken in the light most favorable" to the Sokaogon, that record does not contradict, but instead strongly reinforces, the 1854 treaty's clear terms. (App. 61; *see also id.* at 12-14, 34-35.) Thus, even if it were proper to go beyond the treaty's plain language, the historical record "taken as a whole" demonstrates that there are no "genuine" issues as to any "material" facts requiring a trial on the Sokaogon's "treaty understanding" claim. *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); Fed. R. Civ. P. 56(c).

## II. THE COURTS BELOW CORRECTLY REJECTED THE SOKAOGON'S CLAIM BECAUSE IT CANNOT BE RECONCILED WITH THE 1854 TREATY'S PLAIN LANGUAGE; IS AT ODDS WITH THE NEGOTIATING HISTORY, THE SURROUNDING CIRCUMSTANCES, AND THE PARTIES' SUBSEQUENT CONSTRUCTION; AND IS GROUNDED UPON INADMISSIBLE AND ERRONEOUS HEARSAY, RUMOR, AND CONJECTURE.

The Sokaogon's claim requires consideration of two issues: whether as a general matter the creation of the 1854 treaty reservations extinguished the Lake Superior Chippewas' territorial-wide 1842 treaty "occupancy" rights; and, if so, whether there is any justification to treat the Sokaogon differently from the dozens of other Lake Superior Chippewa bands that were parties to the treaty.

### A. The 1854 Treaty Restricted The Lake Superior Chippewas' "Occupancy" Rights To The Reservations Established Under That Treaty.

The whole tenor of the Sokaogon's petition is that the creation of the 1854 reservation system gave rise *at most* simply to an "implication" or "inference" that the Chippewas' 1842 treaty "rights of occupancy *per se*" throughout northern Wisconsin were thereafter restricted to the reservations themselves. (Pet. i, 11, 15, 17.) This conclusion does not simply follow by "implication" or "inference," however—it is inescapable.

The 1854 treaty was plain on its face: the United States "agree[d] to set apart and withhold from sale" several designated tracts of land that would thereafter serve as "the homes" and as the "points . . . for the residence" of "the Chippewas of Lake Superior," and it further promised that "the Indians shall not be required to remove from the homes hereby set apart for them." (Arts. 2, 5, 7, 11.) That the Chippewa would have their future "homes" on certain lands and not on others (which would be put

up for "sale" to white people) was thus clear on the face of the treaty itself, thereby serving to abrogate the territorial-wide occupancy rights reserved in the earlier 1842 treaty. As the District Court observed below, the 1854 treaty can only be read as having "specifically directed the Chippewa to live" on the reservations set apart for them. (App. 59.) Otherwise, the whole point of establishing reservations would have been "illusory indeed." *United States v. Santa Fe Pacific Railroad Co.*, 314 U.S. 339, 358 (1941) (creation of Walapai Indian Reservation extinguished tribal occupancy rights on other lands).

Moreover, the treaty negotiating history and surrounding circumstances underscore the parties' shared understanding that the Chippewas' future occupancy of the ceded territory would be restricted to their new reservation "homes." (*See* App. 3-4, 7-8, 23-26, 58-59.) As described by the Office of Indian Affairs, the underlying policy of the 1854 treaty toward the Lake Superior Chippewa was "to *circumscribe* their limits, and to *concentrate* them upon permanent locations" on a few "small reservations," so that "the efforts made for their improvement will be rendered more effectual." (Findings ¶ 159, emphasis added.) The 1854 treaty was intended to "concentrate," "confine," and "coloniz[e]" the Chippewa "from their scattered localities upon ample reservations." (*Id.* ¶ 158; *see generally id.* ¶¶ 21, 151-161.) The Chippewa themselves recognized that, as a condition of being allowed to remain in the area, their future rights of occupancy would be restricted to their new reservations. (*See id.* ¶¶ 76-79, 151-155.)

This construction also follows inescapably from this Court's interpretation of the 1842 and 1854 treaties in *United States v. Thomas*, 151 U.S. 577 (1894).[18] It is further dictated by the logic

[18]At issue in *Thomas* was a parcel of land that had been included within the 1842 cession *and* within the boundaries of a reservation established under the 1854 treaty. This Court held that the Chippewas' 1842 occupancy rights had not been extinguished, and that "no change has taken place in their occupancy of the lands, *except as provided by the treaty of September 30, 1854*." 151 U.S. at 582 (emphasis added). Because the 1854 treaty "included the section in question" within a

*(footnote continued on next page)*

of the federal courts' decisions in the *LCO* litigation concerning the continued survival of the Chippewas' *usufructuary* (but not occupancy) rights on certain public lands.[19]

The Sokaogon now concedes the general proposition "that establishment of a reservation home for a Chippewa Band under the 1854 treaty" did indeed serve to "extinguish[ ] the Band's right of occupancy *per se*" under the 1842 treaty. (Pet. 9.) Indeed, the Sokaogon admitted below that this result is "eminently reasonable" and comports with "common sense"—but *only* as applied to the various Chippewa bands *other* than the Sokaogon. (Sok. Seventh Cir. Br. 20.)

**B. There is No Justification For Treating The Sokaogon Differently From The Other Lake Superior Chippewa.**

**1. The Post Lake Bands' Receipt Of 1854 Treaty Annuities Simply Reconfirms That They Were Parties To, And Thus Bound By, The 1854 Treaty.**

The Sokaogon contended below that, unlike the other Lake Superior Chippewa bands, its predecessors "never . . . assented" to the terms of the 1854 treaty, and that it was "not clear" whether they even were "in mind as signatories to the treaty." (*Id.* at 13, 17.) The Sokaogon's petition continues to question whether the Post Lake Chippewa really were "signatories" to the 1854 treaty. (Pet. 6, 9, 15-16.)

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reservation, it "did not operate to defeat the prior right of occupancy to that particular section, but . . . continued it in force." *Id.* at 584. The strong negative inference is that the "prior right of occupancy" *was* "defeated" and was *not* "continued in force" on off-reservation lands. *See also* App. 60.

[19]The Seventh Circuit emphasized in *LCO I* that usufructuary rights are not "inextricably linked" or "dependent" upon rights of actual occupancy, and thus that there is no inherent conflict between restricting Chippewa "occupancy" to the reservations themselves while allowing Chippewa "usufructuary" activities to occur on public property outside of reservation boundaries. 700 F.2d at 352, 363. As the courts reasoned below, the same obviously cannot be said of the rights to "occupy" and "inhabit" the lands that are claimed here. *See* App. 9-12, 55-60; *see also* 700 F.2d at 362 n.12.

It is undisputed, however, that the two principal Post Lake chiefs, Me-gee-see and Ne-gig, were in fact signatories to the treaty. Me-gee-see and Ne-gig themselves acknowledged in 1869 that they had participated in the 1854 negotiations and had executed the treaty; Me-gee-see's son Quing Guish swore in an 1879 affidavit that he too had been present and affirmed that "my father Megesee and Negik the chiefs signed the treaty." (Findings ¶¶ 91-92.) Moreover, the Sokaogon has admitted in its discovery responses that Me-gee-see and Ne-gig entered into the treaty on behalf of their bands. (*See* R. 94, pp. 70-71.)

In addition, Article 4 of the 1854 treaty provided that the Lake Superior Chippewa would receive annuities "for the term of twenty years," and it is undisputed that the Post Lake Chippewa participated in these annuity distributions as "contracting parties" (*see* Art. 13) to the treaty.[20] The Sokaogon also recovered additional money in the 1970s through Indian Claims Commission litigation against the United States on the precise premise that, as a party to the 1854 treaty, it was entitled to further compensation along with the other Lake Superior Chippewa because the original treaty consideration had been "unconscionable" within the meaning of the Indian Claims Commission Act.[21] The Sokaogon is therefore both collaterally and judicially estopped from denying that its predecessors were "signatories" to the treaty who thereby bound themselves to its terms. *See, e.g., Montana v. United States*, 440 U.S. 147, 153 (1979) (collateral

[20]*See* Findings ¶¶ 23, 26, 136 & n.62; R. 95, pp. 1501-1505, 1508-1511, 1516.

[21]The Indian Claims Commission originally did not include the Red Cliff, St. Croix, or Sokaogon (then known as "Mole Lake") bands as plaintiffs in the 1854 treaty litigation. *See Minnesota Chippewa Tribe v. United States*, 14 Ind. Cl. Comm. 360, 360-361 (Dec. 8, 1964). In response to a motion from those bands, however, the Commission thereafter amended its earlier findings and found "that these three bands did constitute a part of the Lake Superior Chippewa Tribe" and had claims under the 1854 treaty. *See* 26 Ind. Cl. Comm. 137 (Aug. 11, 1971). The Commission thereafter awarded additional compensation to the collective treaty claimants. *See* 41 Ind. Cl. Comm. 249, 293-294 (Mar. 30, 1978).

estoppel); *In re Cassidy*, 892 F.2d 637, 641 (CA7) (judicial estoppel), *cert. denied*, 498 U.S. 812 (1990).

The Sokaogon now seizes upon the Court of Appeals' references to the Article 4 annuity payments, noting that those payments were expressly made "[i]n consideration of and payment for" a communal land cession in northeastern Minnesota described in Article 1 of the 1854 treaty. (Pet. 13-15.) The Sokaogon asserts that the court held that simply "by accepting annuity payments under Article 4," the Post Lake bands surrendered their 1842 treaty "occupancy" rights—an interpretation "at patent variance with the express terms of the 1854 treaty." (*Id.* at 14-15.)

The Court of Appeals said no such thing. Instead, the court emphasized throughout its opinion that the Post Lake bands surrendered their *impermanent* 1842 treaty occupancy rights as a *quid pro quo* for receiving *new* rights of *permanent* occupancy in the 1854 treaty reservations:

> "The reservations created a place for the Chippewas to enjoy occupancy rights because they would no longer have such rights off the reservations. . . . The treaty's purpose, as could be gathered from its words and logic and structure and the background circumstances, . . . was to extinguish the Chippewa Indians' occupancy rights throughout the ceded (including previously ceded) areas in exchange . . . for occupancy rights in reservations that would be established by the federal government. . . . [O]nce the reservations in which the Sokaogon had rights of occupancy were created, their rights of occupancy under the 1842 treaty . . . ceased." (App. 10-11, 14.)[22]

[22]The 1842 treaty's occupancy rights were "impermanent" because "[t]he ceded territories were ceded for the purpose of eventual settlement" by whites and thus the Chippewas' 1842 treaty rights "were subject to and limited by the demands of settlers" and "subject to extinction if the lands were needed for settlement." *LCO II,* 760 F.2d at 182-183. The 1854 treaty, on the other hand, guaranteed that the designated reservations would be "set apart and withh[e]ld from sale" and that "the Indians shall not be required to remove from the homes hereby set apart for them." (1854 treaty, Arts. 2 and 11.)

The Article 4 annuity issue is relevant not because the annuities were the contractual "consideration" for the surrender of 1842 treaty occupancy rights, but because the annuities were paid only to those Chippewa bands that were "parties" to the 1854 treaty. The Article 1 land cession, the Article 2 reservation system, and the Article 4 annuity payments all pertained to the contracting chiefs and headmen of the "Chippewas of Lake Superior." The Sokaogon has yet to explain its curious rationale that the Post Lake bands could have been participating "parties" for purposes of Articles 1 and 4, but not for purposes of Article 2. The Court of Appeals committed no error—it was manifestly correct—in concluding that a treaty signatory cannot pick and choose among the treaty's "benefits" and "burdens" that it wishes to accept. (App. 12-13.)

### 2. The Sokaogon's Claim Is Barred By The 1854 Treaty's Plain Terms, By The Negotiating History, And By The Surrounding Circumstances.

(a) *The plain language*. As signatories to the 1854 treaty, Chiefs Me-gee-see and Ne-gig and their bands acquired the right to live on three different Wisconsin Chippewa reservations. They could move to what is now known as the Bad River Reservation, created "[f]or the La Pointe band, *and such other Indians as may see fit to settle with them*," or they could live on the LDF or LCO reservations, to be set apart "*[f]or the other Wisconsin bands.*" (Art. 2 §§ 2-3, emphasis added.)

The Sokaogon attempts to get around the language underscored above by arguing that these words might not actually have meant what they said; perhaps the Bad River, LDF, and LCO reservations were *restricted* to the bands that actually were living on those designated tracts as of 1854, and *excluded* all of "the other Wisconsin bands." (Pet. 15-16.) But the 1854 treaty said just the opposite. When a reservation promised in the treaty was intended to be restricted to one or more particular Chippewa bands, the treaty plainly and unambiguously said so: there were separate reservations expressly set aside "[f]or the L'Anse and

Vieux De Sert bands" (Art. 2 § 1), "[f]or the Fond du Lac bands" (Art. 2 § 4), "[f]or the Grand Portage band" (Art. 2 § 5), for "[t]he Ontonagon band" (Art. 2 § 6), for "that subdivision of the La Pointe band of which Buffalo is chief" (*ibid.*), and for "the Bois Forte Indians" (Art. 12). The Bad River, LDF, and LCO reservations were the *only* reservations that were *not* restricted to specified Chippewa bands; they would be open to "such other Indians as may see fit to settle" there and "[f]or the *other* Wisconsin bands." (Art. 2 §§ 2-3, emphasis added.)

A court "must take care, when using its power to ascertain the intention of the parties, not to disregard the obvious import of the words employed" or to "giv[e] to an Indian treaty a meaning not justified by its words." *United States v. Choctaw Nation*, 179 U.S. 494, 538, 541 (1900). Yet as the Court of Appeals emphasized below, that is the whole premise of the Sokaogon's case—that "the treaty does not mean what it says." (App. 5.) The Post Lake bands clearly were "other Indians" and "other Wisconsin bands" that were not assigned to their own separate reservation. The Sokaogon's argument that its predecessors were somehow exempt from the treaty because the treaty did not "expressly" assign them to a particular reservation cannot be squared with the treaty's express "catch-all provisions." (*See generally* App. 8-9, 11-12, 48-49, 62.) Quite simply, as the District Court concluded, "[t]here are no ambiguities in the treaty's language that could be construed in favor of the Sokaogon." (App. 48-49.)

The reservations specified above were the only reserves promised in the 1854 treaty as executed by the Chippewa, approved by the President, and ratified by the United States Senate. There is not even a hint of a separate "Post Lake Reservation" by that or any other name. The Sokaogon's claims that its predecessors were either somehow exempt from the treaty's provisions or were orally promised an additional reservation of their own are accordingly barred. Although ambiguities in treaty language generally are construed in the Native Americans' favor, this Court repeatedly has emphasized that "even Indian treaties cannot be rewritten or expanded beyond their clear terms to remedy a claimed

injustice or to achieve the asserted understanding of the parties." *Choctaw Nation v. United States*, 318 U.S. 423, 432 (1943).[23]

(b) *The historical record*. The negotiating history and surrounding circumstances further refute the Sokaogon's theory that the 1854 treaty can somehow be read as providing that "[e]ach" of the Wisconsin Chippewa bands would be given its own reservation "on its home ground, or drawn to its selection, and would not be required to remove from its home precincts." (Pet. 16.) This argument completely mischaracterizes history and ignores the treaty's underlying purposes. Twenty-three separate bands of Lake Superior Chippewa were present for the treaty negotiations —bands that were scattered throughout northern Michigan, Wisconsin, and Minnesota, including on the headwaters of the Wisconsin, Chippewa, St. Croix, and Wolf Rivers. (*See* Findings ¶ 158 n.77; *see also* page 5 and notes 10-11 above.)[24]

Thus, contrary to the Sokaogon's claims, many other Lake Superior Chippewa were required to "relocate" to the reservations specified in the treaty. As shown above, that was the whole point of the compromise struck in the treaty: the Chippewa would be allowed to remain in the area, but the United States would "*circumscribe* their limits," "*concentrate* them upon permanent

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[23]*See also South Carolina v. Catawba Indian Tribe, Inc.* 476 U.S. 498, 506 (1986) ("The canon of construction regarding the resolution of ambiguities in favor of Indians . . . does not permit reliance on ambiguities that do not exist . . ."); *Oregon Department of Fish and Wildlife v. Klamath Indian Tribe*, 473 U.S. 753, 774 (1985) ("courts cannot ignore plain language that, viewed in historical context and given a 'fair appraisal,' . . . clearly runs counter to a tribe's later claims"); *DeCoteau v. District County Court for the Tenth Judicial District*, 420 U.S. 425, 447 (1975) ("A canon of construction is not a license to disregard clear expressions of tribal and congressional intent"); *Northwestern Bands of Shoshone Indians v. United States*, 324 U.S. 335, 353 (1945) (in construing a treaty, "[w]e stop short of varying its terms to meet alleged injustices"); *United States v. Choctaw Nation*, 179 U.S. at 535-536, 538, 541.

[24]*See also Atlas of Great Lakes Indian History*, p. 146 (H. Tanner ed. 1987) ("In northern Wisconsin and western Upper Peninsula Michigan" in the mid-19th century, "Ojibwa numbering about 3,800 were distributed among . . . 35 principal locations in the subject area").

locations," and "*coloniz[e]* them from their scattered localities" onto the designated reservations. (*See* pages 6-7 and 17-19 above.) It is the Sokaogon that is seeking to be treated unlike other treaty signatories—not the other way around. *See also* the Court of Appeals' analysis of the negotiating history at App. 8.[25]

The Sokaogon's "treaty understanding" and "lost reservation" arguments cannot prevail in the face of the plain treaty language and the massive historical record "taken as a whole." *Matsushita*, 475 U.S. at 587. To begin with, the whole foundation of these arguments is the contention—first advanced by Chiefs Me-gee-see and Ne-gig in 1869—that Commissioner Manypenny had induced them to sign the 1854 treaty through oral assurances that they would receive their own reservation "in the vicinity of Post Lake." (Findings ¶¶ 91-93, 156.) This could not possibly have happened because, as an examination of the negotiating records and Manypenny's office files reveals, Manypenny was not even *present* at La Pointe for the treaty talks. (*Id.* ¶ 157; *see also* App. 6, 49.)[26]

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[25]The Sokaogon thinks it significant that the Post Lake bands were not separately designated as such in the 1854 treaty, as they had been in the 1842 treaty (*sub nom.* "Lake Bands"), but instead were grouped with others under the "Lac Du Flambeau Band" sub-heading. (Pet. 6, 9, 15-16.) The same thing can be said of many other Chippewa bands separately identified in the 1842 treaty but grouped together with other bands in the 1854 treaty, including the "Wisconsin River," "St. Croix," "Chippewa River," "Snake River," "Mille Lac," "Po ke gom maw," "Red Ceder Lake," "Gull Lake," "Sandy Lake," and "Crow-wing River" bands. Under the Sokaogon's logic, these bands also would be exempt from the 1854 treaty's extinguishment of the Chippewas' "rights of occupancy *per se*." The much more natural construction is to read the 1854 treaty as having grouped the various bands together according to the reservations upon which they were expected to live in the future.

[26]Manypenny and Me-gee-see did meet *after* the treaty had been ratified, during the 1855 annuity distribution in La Pointe. According to an observer, Me-gee-see complained "that his band were unprovided for, and without any right of location upon any of the reservations"; in response, Manypenny "directed him to come to his office after council; *what was done we did not learn*." (Findings ¶ 173, emphasis added.) The

*(Footnote continued on following page)*

Moreover, although the Post Lake bands sometimes claimed to have the "understanding" that they were entitled to their own reservation, at other times they clearly expressed the "understanding" that they *did* have rights on the residual "catch-all" reserves. *See* page 7 above; App. 7, 26-27, 62. One petition, for example—signed by 17 of the bands' elders and written after they had heard that the LDF reservation might be sold—unambiguously asserted:

> "We do not want to move to the Lake Flambeau reservation to which we were apportioned by the treaty of 1854 . . . . At the same time, we do not want to give up our interests in the Lake Flambeau reservation, if it should be sold, as by that treaty of 1854 we are numbered in with the Lake Flambeau Indians." (R. 95, pp. 1455-1456; *see also* Findings ¶¶ 24, 199.)

As the Court of Appeals emphasized, "[t]he oral tradition of a promised reservation is not *evidence*, that is, evidence admissible in a court of law, which is what Fed. R. Civ. P. 56 explicitly requires in order to create a triable issue." (App. 12, emphasis in original.) The treaty is not simply another piece of evidence to be balanced on a scale against oral legends and speculative inferences. It is *the* controlling law. To be sure, admissible evidence may be used in construing ambiguities in treaty language, and

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*(Footnote continued from previous page)*
Sokaogon argued below that the fact that Manypenny decided to discuss the matter in "private discussion" with Me-gee-see rather than debate it in front of the other chiefs shows that Me-gee-see's remark must have had "serious" merit. (Sok. Seventh Cir. Br. 18 n.7.)

This is nothing more than rank speculation and conjecture. The same observer wrote that Me-gee-see "was not well spoken of by his neighbors" and that Ne-gig "was considered a great rascal"; perhaps Manypenny simply did not want to spend time during his meeting with the entire council discussing these particular chiefs' alleged grievances. (Findings ¶ 173.) There is certainly no plausible basis to speculate that Manypenny might have told Me-gee-see in "private discussion" that the treaty Me-gee-see had signed just the previous year did not mean what it said. (*See id.* ¶¶ 174-179.) And even if he had, Me-gee-see obviously could not have signed the treaty in 1854 in reliance on a "private discussion" with Manypenny that had not yet taken place.

uncertainties should be resolved in the Native Americans' favor —"within the bounds of reason of course." (App. 10.) But as the Court of Appeals concluded, here the relevant treaty terms are "unambiguous" and provide "no textual handle" for the Sokaogon's claims. (App. 7, 9.)

### 3. The Post Lake Bands' Refusal To Remove To A Reservation, And The Federal Government's Decision Not To Use Force Against Them, Did Not "Revive" Their Previous "Occupancy Rights."

The Sokaogon asserts that the Court of Appeals concluded that, even if the Post Lake bands received *no* reservation rights *anywhere* under the 1854 treaty, they *still* lost their 1842 treaty occupancy rights because they neglected over the years to make "explicit statements" of belief that their 1842 rights remained in effect. (Pet. 17; *see generally id.* at 16-19.) The court below did no such thing. Although it made the accurate factual observation that the Sokaogon's post-1854 petitions and claims did not invoke the 1842 treaty, *see* App. 13-14, nowhere in its decision did it ever suggest that this was a controlling consideration.

Nor did the court anywhere hold that the Sokaogon's 1842 treaty occupancy rights were extinguished even if "the Post Lake Band was not provided with a reservation under the 1854 treaty." (Pet. 17.) To the contrary, the court made clear at the outset that it was assuming, solely for the sake of decision, that the 1842 treaty occupancy rights survive intact to this day *unless* those rights were "surrendered" through the 1854 treaty. (App. 2-3.) The rest of the decision was devoted to demonstrating that this was precisely what had happened. The very paragraph containing the "explicit statement" language that the Sokaogon now criticizes concludes that the 1842 treaty occupancy rights were extinguished, not because of the Sokaogon's failure to make "explicit statements," but because "reservations in which the Sokaogon had rights of occupancy were created" under the 1854 treaty. (App. 14.)

The Sokaogon also finds significance in the fact that the Post Lake bands remained in the area in the decades following the 1854 treaty, and asserts that "the United States did not seek to remove them" during this time. (Pet. 19 n.4.) The latter contention is false. Federal Indian agents repeatedly characterized these bands during the 1860s and 1870s as falling within the "other Wisconsin bands" provision in Article 2, § 3 of the 1854 treaty, and as therefore having rights on the LDF or LCO reserves, *not* in the subject territory. (*See especially* the field reports quoted in Findings ¶¶ 184, 188, 193, 195.) The Mackinac Indian Agency sometimes sought as a matter of convenience to remove the Post Lake Chippewa to the L'Anse Reservation since they had been transferred at their own request to that agency's jurisdiction, but that agency likewise emphasized that they had no right to remain where they were and that they properly fell within "the terms of the treaty of September 30, 1854 3d clause, article 2d." (*Id.* ¶ 188; *see also* page 10 and note 13 above.) The Post Lake Chippewa were consistently viewed as "a strageling [*sic*] portion of the Tribe that ha[d] wandered off" and "refuse[d] to leave their old homes." (Findings ¶¶ 188, 198.)

This also was the view of the Office of Indian Affairs, which twice rejected the Post Lake Chippewas' requests for their own separate reservation—once in 1864 and again in 1880. (*Id.* ¶¶ 89, 190, 199-200.) That agency unambiguously held that they fell within the "other Wisconsin bands" provision in Article 2, § 3; that they belonged on the LDF reservation but "have *without authority*, seen proper to isolate themselves from their brethren"; that they were required under the treaty to "betake themselves to the reservation provided for them"; and that "[t]his Department is bound to respect the treaty as it finds it and can recognize no other reservation than that specified." (Findings ¶ 200, emphasis added.) This construction of the 1854 treaty by the executive department charged with its implementation is entitled to "great weight." *Dennison v. Topeka Chambers Industrial Development Corp.*, 527 F. Supp. 611, 622 (D. Kan. 1981), *aff'd*, 724 F.2d 869 (CA10 1984); *see also Russ v. Wilkins*, 624 F.2d 914, 922-923 (CA9), *cert. denied*, 451 U.S. 908 (1981).

Subsequent official investigations during the early 20th century simply reconfirmed, in the words of the Office of Indian Affairs, that "[t]he so-called lost band of Chippewa Indians of Wisconsin" had "refused to remove to the Lac du Flambeau Reservation"; they had "not received allotments [of land] because of their refusal to remove to the reservation set apart for their band." (Findings ¶ 240.) The Solicitor of the Department of the Interior likewise concluded from his investigation that these Native Americans were landless because they had "persisted in their refusal to be located upon the reservations of other Chippewa in Wisconsin." (*Id.* ¶ 243.)

The federal government's decision for practical and humanitarian reasons not to inflict a forced removal creates no inference whatsoever that the Post Lake bands had continuing 1842 treaty occupancy rights in the disputed area. As the Court of Appeals emphasized, while

> "the government decided not to use force against the Post Lake bands . . . it never acknowledged their right either to remain where they were living or to have a reservation created specially for them. It took the position that they were bound by the 1854 treaty, that the government had performed its treaty obligations to them by creating reservations that they had a right to occupy, and that they were merely squatters on the land on which they continued to live." (App. 6-7.)

*See Healing v. Jones*, 210 F. Supp. 125, 147-148 (D. Ariz. 1962), *aff'd*, 373 U.S. 758 (1963); *see also id.* at 174 ("Actual use and occupancy of land, without more, has no connotation of rightful possession. A trespasser may have actual use and occupancy of land"). *See generally United States v. Southern Ute Tribe*, 402 U.S. 159, 169, 171 (1971) (*re* interpretation of bilateral agreement incorporated into statute) ("We do not doubt that the Southern Utes regarded the lands they occupied as 'our reservation,' but we fail to see how this nullifies . . . [the] cogent evidence that the United States totally rejected the Indians' claim that the strip was 'our reservation' "); *Confederated Bands of Ute Indians v. United States*, 330 U.S. 169, 180 (1947) ("We cannot, under any accept-

able rule of interpretation, hold that the Indians owned the lands merely because they thought so").[27]

## CONCLUSION

For all of the foregoing reasons, the respondent Exxon Corporation respectfully submits that the petition for a writ of certiorari should be denied.

Dated this 22nd day of February, 1994.

Respectfully submitted,

*CHARLES G. CURTIS, JR.
FOLEY & LARDNER
One South Pinckney Street
Madison, Wisconsin 53701-1497
(608) 257-5035

DAVID E. BECKWITH
DAVID LUCEY
FOLEY & LARDNER
777 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-5367
(414) 271-2400

**Counsel of Record*

*Attorneys for Respondent*
*Exxon Corporation*

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[27]The 140-year-old "lost reservation" dispute has fundamentally been between the United States and the Sokaogon, not innocent third parties like Exxon. The federal government has consistently rejected the Sokaogon's claim through the generations, and it granted the subject territory to white settlers as "vacant and unappropriated lands" that had been found "to be free from conflict." (Findings ¶ 208; *see generally id.* ¶¶ 162-243.) Thus, even *if* the government broke an unwritten promise to the Sokaogon, the remedy at this late date would be for damages against the United States, not for the seizure of lands held by innocent third parties. *See United States v. Creek Nation*, 295 U.S. 103, 110-111 (1935); *Yankton Sioux Tribe v. United States*, 272 U.S. 351, 357, 359 (1926); *Navajo Tribe v. New Mexico*, 809 F.2d 1455, 1467 (CA10 1987); *Confederated Salish & Kootenai Tribes v. United States*, 185 Ct. Cl. 421, 401 F.2d 785, 786 (1968), *cert. denied*, 393 U.S. 1055 (1969).

No. 93-1223

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1993

SOKAOGON CHIPPEWA COMMUNITY,

*Petitioner,*

v.

EXXON CORPORATION, a corporation chartered in the State of New Jersey; STATE OF WISCONSIN; FOREST COUNTY, a political subdivision of the State of Wisconsin; LANGLADE COUNTY, a political subdivision of the State of Wisconsin; and ONEIDA COUNTY, a political subdivision of the State of Wisconsin,

*Respondents.*

**On Petition For A Writ Of Certiorari To The United States Court of Appeals For The Seventh Circuit**

## SUPPLEMENTAL APPENDIX TO RESPONDENT EXXON CORPORATION'S BRIEF IN OPPOSITION

# SUPPLEMENTAL APPENDIX

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EDITOR'S NOTE

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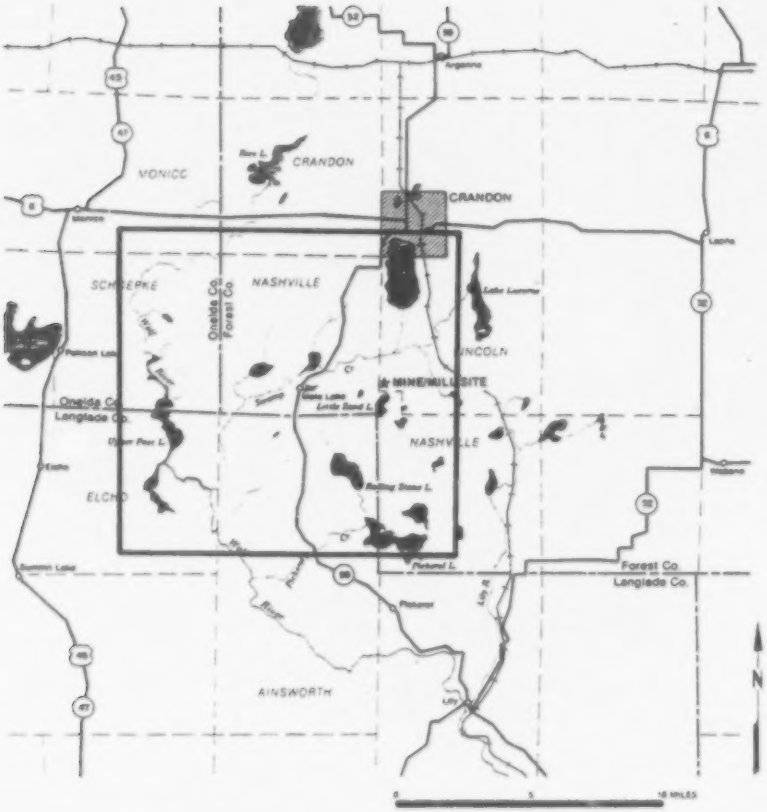


ILLUSTRATION 1

LOCATION OF "SUBJECT TERRITORY"

AREA CLAIMED BY SOKAOGON SHOWN IN HEAVY RED LINE

SOURCE: Adapted from Wisconsin DNR, Crandon Project FEIS, Figure 1-1 (1986). (Full cite and record source in the Table of Contents to this Supplemental Appendix.)

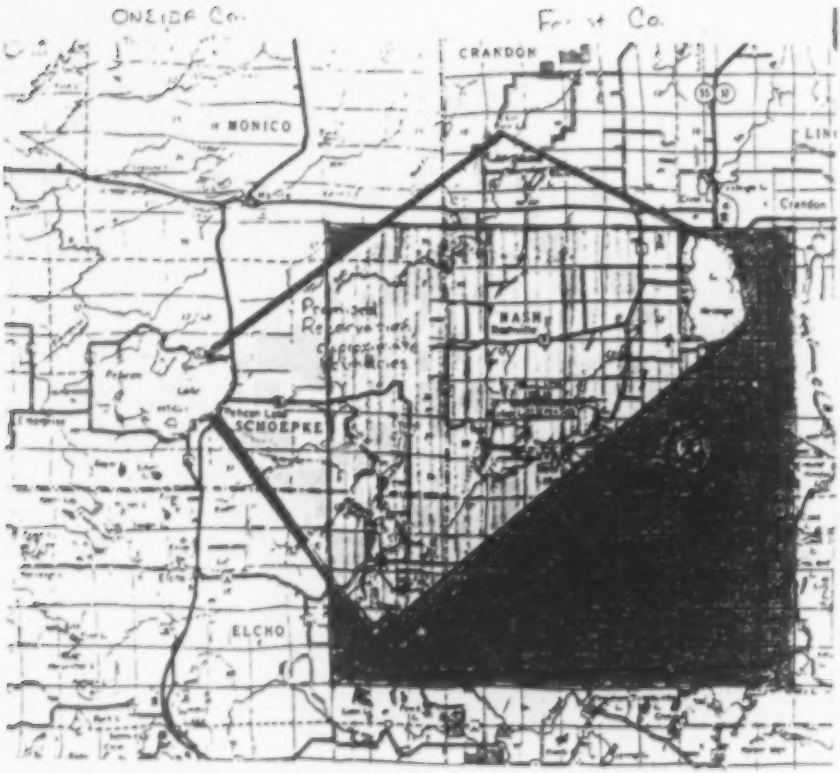


**ILLUSTRATION 2**

THE TWO "LOST RESERVATIONS" CLAIMED IN THIS LITIGATION

The black-and-white portion of this Illustration is a copy of the map attached to the Sokaogon's original June 5, 1986 Complaint. (See R. 1.) The reservation claimed in that complaint is shaded in yellow. The reservation claimed in the Second Amended Complaint is shaded in blue, corresponding to the map produced by the Sokaogon in 1987. (See R. 94, pp. 17-18.) The location of Exxon's orebody is shown by the red star. (Record source in the Table of Contents to this Supplemental Appendix.)

ILLUSTRATION 3

WISCONSIN INDIAN CESSIONS TO UNITED STATES

SOURCE: Bureau of American Ethnology, 1896-97.
(Full cite and record source in the Table of Contents to this Supplemental Appendix.)

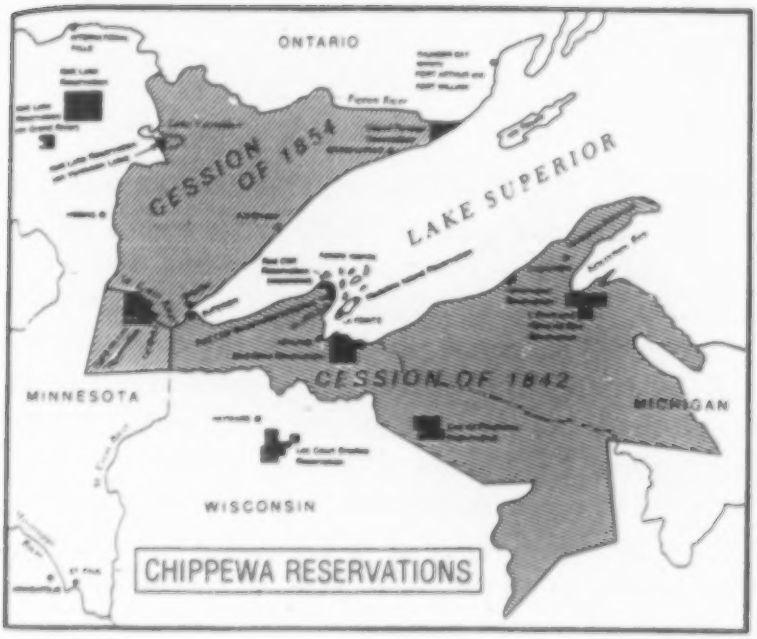


ILLUSTRATION 4

RESERVATIONS CREATED PURSUANT TO 1854 TREATY

SOURCE: E. Danziger, "They Would Not Be Moved: The Chippewa Treaty of 1854," 41 Minnesota History 175-185 (1973). (Record source in the Table of Contents to this Supplemental Appendix.)

# TREATY WITH THE CHIPPEWA OF OCTOBER 4, 1842

## 7 STAT. 591

*Articles of a treaty made and concluded at La Pointe of Lake Superior, in the Territory of Wisconsin, between Robert Stuart commissioner on the part of the United States, and the Chippewa Indians of the Mississippi, and Lake Superior, by their chiefs and headmen.*

### ARTICLE I.

THE Chippewa Indians of the Mississippi and Lake Superior, cede to the United States all the country within the following bounderies; viz: beginning at the mouth of Chocolate river of Lake Superior; thence northwardly across said lake to intersect the boundery line between the United States and the Province of Canada; thence up said Lake Superior, to the mouth of the St. Louis, or Fond du Lac river (including all the islands in said lake); thence up said river to the American Fur Company's trading post, at the southwardly bend thereof, about 22 miles from its mouth; thence south to intersect the line of the treaty of 29th July 1837, with the Chippewas of the Mississippi; thence along said line to its southeastwardly extremity, near the Plover portage on the Wisconsin river; thence northeastwardly, along the boundery line, between the Chippewas and Menomonees, to its eastern termination, (established by the treaty held with the Chippewas, Menomonees, and Winnebagoes, at Butte des Morts, August 11th 1827) on the Skonawby river of Green Bay; thence northwardly to the source of Chocolate river; thence down said river to its mouth, the place of beginning; it being the intention of the parties to this treaty, to include in this cession, all the Chippewa lands eastwardly of the aforesaid line running from the American Fur Company's trading post on the Fond du Lac river to the intersection of the line of the treaty made with the Chippewas of the Mississippi July 29th 1837.

ARTICLE II.

The Indians stipulate for the right of hunting on the ceded territory, with the other usual privileges of occupancy, until required to remove by the President of the United States, and that the laws of the United States shall be continued in force, in respect to their trade and inter course with the whites, until otherwise ordered by Congress.

ARTICLE III.

It is agreed by the parties to this treaty, that whenever the Indians shall be required to remove from the ceded district, all the unceded lands belonging to the Indians of Fond du Lac, Sandy Lake, and Mississippi bands, shall be the common property and home of all the Indians, party to this treaty.

ARTICLE IV.

In consideration of the foregoing cession, the United States, engage to pay to the Chippewa Indians of the Mississippi, and Lake Superior, annually, for twenty-five years, twelve thousand five hundred (12,500) dollars, in specie, ten thousand five hundred (10,500) dollars in goods, two thousand (2,000) dollars in provisions and tobacco, two thousand (2,000) dollars for the support of two blacksmiths shops, (including pay of smiths and assistants, and iron steel &c.) one thousand (1,000) dollars for pay of two farmers, twelve hundred (1,200) for pay of two carpenters, and two thousand (2,000) dollars for the support of schools for the Indians party to this treaty; and further the United States engage to pay the sum of five thousand (5,000) dollars as an agricultural fund, to be expended under the direction of the Secretary of War. And also the sum of seventy-five thousand (75,000) dollars, shall be allowed for the full satisfaction of their debts within the ceded district, which shall be examined by the commissioner to this treaty, and the amount to be allowed decided upon by him, which shall appear in a schedule hereunto annexed. The United States shall pay the amount so allowed within three years.

Whereas the Indians have expressed a strong desire to have some provision made for their half breed relatives, therefore it is agreed, that fifteen thousand (15,000) dollars shall be paid to said Indians, next year, as a present, to be disposed of, as they, together with their agent, shall determine in council.

ARTICLE V.

Whereas the whole country between Lake Superior and the Mississippi, has always been understood as belonging in common to the Chippewas, party to this treaty; and whereas the bands bordering on Lake Superior, have not been allowed to participate in the annuity payments of the treaty made with the Chippewas of the Mississippi, at St. Peters July 29th 1837, and whereas all the unceded lands belonging to the aforesaid Indians, are hereafter to be held in common, therefore, to remove all occasion for jealousy and discontent, it is agreed that all the annuity due by the said treaty, as also the annuity due by the present treaty, shall henceforth be equally divided among the Chippewas of the Mississippi and Lake Superior, party to this treaty, so that every person shall receive an equal share.

ARTICLE VI.

The Indians residing on the Mineral district, shall be subject to removal therefrom at the pleasure of the President of the United States.

ARTICLE VII.

This treaty shall be obligatory upon the contracting parties when ratified by the President and Senate of the United States.

In testimony whereof the said Robert Stuart commissioner, on the part of the United States, and the chiefs and headmen of the Chippewa Indians of the Mississippi and Lake Superior, have hereunto set their hands, at La Pointe of Lake Superior, Wisconsin Territory this fourth day of October in the year of our Lord one thousand eight hundred and forty-two.

Robert Stuart, Commissioner.
Jno. Hulbert, Secretary.

| | | |
|---|---|---|
| Crow wing River, | Po go ne gi shik, | 1st chief. |
| Do. | Son go com ick, | 2d do. |
| Sandy Lake, | Ka non do ur uin zo, | 1st do. |
| Do. | Na tum e gaw bon, | 2d do. |
| Gull Lake, | Ua bo jig, | 1st do. |
| Do. | Pay pe si gon de bay, | 2d do. |
| Red Ceder Lake, | Kut ui sen shis, | 1st do. |
| Do. | Ott taw wance, | 2d do. |
| Po ke gom maw, | Bai ie jig, | 1st do. |
| Do. | Show ne aw, | 2d do. |
| Wisconsin River, | Ki uen zi, | 1st do. |
| Do. | Wi aw bis ke kut te way, | 2d do. |
| Lac de Flambeau, | A pish ka go gi, | 1st do. |
| Do. | May tock cus e quay, | 2d do. |
| Do. | She maw gon e, | 2d do. |
| Lake Bands, | Ki ji ua be she shi, | 1st do. |
| Do. | Ke kon o tum, | 2d do. |
| Fon du Lac, | Shin goob, | 1st do. |
| Do. | Na gan nab, | 2d do. |
| Do. | Mong o zet, | 2d do. |
| La Pointe, | Gitchi waisky, | 1st do. |
| Do. | Mi zi, | 2d do. |
| Do. | Ta qua gone e, | 2d do. |
| Onlonagan, | O kon di kan, | 1st do. |
| Do. | Kis ke taw wac, | 2d do. |
| Ance, | Pe na shi, | 1st do. |
| Do. | Guck we san sish, | 2d do. |
| Vieux Desert, | Ka she osh e, | 1st do. |
| Do. | Medge waw gwaw wot, | 2d do. |
| Mille Lac, | Ne qua ne be, | 1st do. |
| Do. | Ua shash ko kum, | 2d do. |
| Do. | No din, | 2d do. |
| St. Croix, | Be zhi ki, | 1st do. |
| Do. | Ka bi na be, | 2d do. |
| Do. | Ai aw bens, | 2d do. |
| Snake River, | Sha go bi, | 1st do. |
| Chippewa River, | Ua be she shi, | 1st do. |
| | Que way zhan sis, | 2d do. |
| Lac Courtulle, | Ne na nang eb, | 1st do. |
| Do. | Be bo kon uen, | 2d do. |
| Do. | Ki uen zi, | 2d do. |

## In presence of—

Henry Blanchford, interpreter.
Samuel Ashmun, interpreter.
Justin Rice.
Charles H. Oakes.
William A. Aitkin.
William Brewster.
Charles M. Borup.
Z. Platt.
C. H. Beauheau.
L. T. Jamison.
James P. Scott.
Cyrus Mendenhall.
L. M. Warren.

(To the Indian names are subjoined marks.)

## TREATY WITH THE CHIPPEWA OF SEPTEMBER 30, 1854

### 10 STAT. 1109

*Articles of a treaty made and concluded at La Pointe, in the State of Wisconsin, between Henry C. Gilbert and David B. Herriman, commissioners on the part of the United States, and the Chippewa Indians of Lake Superior and the Mississippi, by their chiefs and head-men.*

ARTICLE 1. The Chippewas of Lake Superior hereby cede to the United States all the lands heretofore owned by them in common with the Chippewas of the Mississippi, lying east of the following boundary-line, to wit: Beginning at a point, where the east branch of Snake River crosses the southern boundary-line of the Chippewa country, running thence up the said branch to its source, thence nearly north, in a straight line, to the mouth of East Savannah River, thence up the St. Louis River to the mouth of East Swan River, thence up the East Swan River to its source, thence in a straight line to the most westerly bend of Vermillion River, and thence down the Vermillion River to its mouth.

The Chippewas of the Mississippi hereby assent and agree to the foregoing cession, and consent that the whole amount of the consideration money for the country ceded above, shall be paid to the Chippewas of Lake Superior, and in consideration thereof the Chippewas of Lake Superior hereby relinquish to the Chippewas of the Mississippi, all their interest in and claim to the lands heretofore owned by them in common, lying west of the above boundry-line.

ARTICLE 2. The United States agree to set apart and withhold from sale, for the use of the Chippewas of Lake Superior, the following-described tracts of land, viz:

1st. For the L'Anse and Vieux De Sert bands, all the unsold lands in the following townships in the State of Michigan: Township fifty-one north range thirty-three west; township fifty-one

north range thirty-two west; the east half of township fifty north range thirty-three west; the west half of township fifty north range thirty-two west, and all of township fifty-one north range thirty-one west, lying west of Huron Bay.

2d. For the La Pointe band, and such other Indians as may see fit to settle with them, a tract of land bounded as follows: Beginning on the south shore of Lake Superior, a few miles west of Montreal River, at the mouth of a creek called by the Indians Ke-che-se-be-we-she, running thence south to a line drawn east and west through the centre of township forty-seven north, thence west to the west line of said township, thence south to the south-east corner of township forty-six north, range thirty-two west, thence west the width of two townships, thence north the width of two townships, thence west one mile, thence north to the lake shore, and thence along the lake shore, crossing Shag-waw-me-quon Point, to the place of beginning. Also two hundred acres on the northern extremity of Madeline Island, for a fishing ground.

3d. For the other Wisconsin bands, a tract of land lying about Lac De Flambeau, and another tract on Lac Court Orielles, each equal in extent to three townships, the boundaries of which shall be hereafter agreed upon or fixed under the direction of the President.

4th. For the Fond Du Lac bands, a tract of land bounded as follows: Beginning at an island in the St. Louis River, above Knife Portage, called by the Indians Paw-paw-sco-me-me-tig, running thence west to the boundary-line heretofore described, thence north along said boundary-line to the mouth of Savannah River, thence down the St. Louis River to the place of beginning. And if said tract shall contain less than one hundred thousand acres, a strip of land shall be added on the south side thereof, large enough to equal such deficiency.

5th. For the Grand Portage band, a tract of land bounded as follows: Beginning at a rock a little east of the eastern extremity

of Grand Portage Bay, running thence along the lake shore to the mouth of a small stream called by the Indians Maw-ske-gwaw-caw-maw-se-be, or Cranberry Marsh River, thence up said stream, across the point to Pigeon River, thence down Pigeon River to a point opposite the starting-point, and thence across to the place of beginning.

6th. The Ontonagon band and that subdivision of the La Pointe band of which Buffalo is chief, may each select, on or near the lake shore, four sections of land, under the direction of the President, the boundaries of which shall be defined hereafter. And being desirous to provide for some of his connections who have rendered his people important services, it is agreed that the chief Buffalo may select one section of land, at such place in the ceded territory as he may see fit, which shall be reserved for that purpose, and conveyed by the United States to such person or persons as he may direct.

7th. Each head of a family, or single person over twenty-one years of age at the present time of the mixed bloods, belonging to the Chippewas of Lake Superior, shall be entitled to eighty acres of land, to be selected by them under the direction of the President, and which shall be secured to them by patent in the usual form.

ARTICLE 3. The United States will define the boundaries of the reserved tracts, whenever it may be necessary, by actual survey, and the President may, from time to time, at his discretion, cause the whole to be surveyed, and may assign to each head of a family or single person over twenty-one years of age, eighty acres of land for his or their separate use; and he may, at his discretion, as fast as the occupants become capable of transacting their own affairs, issue patents therefor to such occupants, with such restrictions of the power of alienation as he may see fit to impose. And he may also, at his discretion, make rules and regulations, respecting the disposition of the lands in case of the death of the head of a

family, or single person occupying the same, or in case of its abandonment by them. And he may also assign other lands in exchange for mineral lands, if any such are found in the tracts herein set apart. And he may also make such changes in the boundaries of such reserved tracts or otherwise, as shall be necessary to prevent interference with any vested rights. All necessary roads, highways, and railroads, the lines of which may run through any of the reserved tracts, shall have the right of way through the same, compensation being made therefor as in other cases.

ARTICLE 4. In consideration of and payment for the country hereby ceded, the United States agree to pay to the Chippewas of Lake Superior, annually, for the term of twenty years, the following sums to wit: five thousands dollars in coin; eight thousand dollars in goods, household furniture and cooking utensils; three thousand dollars in agricultural implements and cattle, carpenter's and other tools and building materials, and three thousand dollars for moral and educational purposes, of which last sum, three hundred dollars per annum shall be paid to the Grand Portage band, to enable them to maintain a school at their village. The United States will also pay the further sum of ninety thousand dollars, as the chiefs in open council may direct, to enable them to meet their present just engagements. Also the further sum of six thousand dollars, in agricultural implements, household furniture, and cooking utensils, to be distributed at the next annuity payment, among the mixed bloods of said nation. The United States will also furnish two hundred guns, one hundred rifles, five hundred beaver-traps, three hundred dollars' worth of ammunition, and one thousand dollars' worth of ready-made clothing, to be distributed among the young men of the nation, at the next annuity payment.

ARTICLE 5. The United States will also furnish a blacksmith and assistant, with the usual amount of stock, during the continuance of the annuity payments, and as much longer as the Presi-

dent may think proper, at each of the points herein set apart for the residence of the Indians, the same to be in lieu of all the employees to which the Chippewas of Lake Superior may be entitled under previous existing treaties.

ARTICLE 6. The annuities of the Indians shall not be taken to pay the debts of individuals, but satisfaction for depredations committed by them shall be made by them in such manner as the President may direct.

ARTICLE 7. No spirituous liquors shall be made, sold, or used on any of the lands herein set apart for the residence of the Indians, and the sale of the same shall be prohibited in the Territory hereby ceded, until otherwise ordered by the President.

ARTICLE 8. It is agreed, between the Chippewas of Lake Superior and the Chippewas of the Mississippi, that the former shall be entitled to two-thirds, and the latter to one-third, of all benefits to be derived from former treaties existing prior to the year 1847.

ARTICLE 9. The United States agree that an examination shall be made, and all sums that may be found equitably due to the Indians, for arrearages of annuity or other thing, under the provisions of former treaties, shall be paid as the chiefs may direct.

ARTICLE 10. All missionaries, and teachers, and other persons of full age, residing in the territory hereby ceded, or upon any of the reservations hereby made by authority of law, shall be allowed to enter the land occupied by them at the minimum price whenever the surveys shall be completed to the amount of one quarter-section each.

ARTICLE 11. All annuity payments to the Chippewas of Lake Superior, shall hereafter be made at L'Anse, La Pointe, Grand Portage, and on the St. Louis River; and the Indians shall not be required to remove from the homes hereby set apart for them. And such of them as reside in the territory hereby ceded, shall

have the right to hunt and fish therein, until otherwise ordered by the President.

ARTICLE 12. In consideration of the poverty of the Bois Forte Indians who are parties to this treaty, they having never received any annuity payments, and of the great extent of that part of the ceded country owned exclusively by them, the following additional stipulations are made for their benefit. The United States will pay the sum of ten thousand dollars, as their chiefs in open council may direct, to enable them to meet their present just engagements. Also the further sum of ten thousand dollars, in five equal annual payments, in blankets, cloth, nets, guns, ammunition, and such other articles of necessity as they may require.

They shall have the right to select their reservation at any time hereafter, under the direction of the President; and the same may be equal in extent, in proportion to their numbers, to those allowed the other bands, and be subject to the same provisions.

They shall be allowed a blacksmith, and the usual smithshop supplies, and also two persons to instruct them in farming, whenever in the opinion of the President it shall be proper, and for such length of time as he shall direct.

It is understood that all Indians who are parties to this treaty, except the Chippewas of the Mississippi, shall hereafter be known as the Chippewas of Lake Superior. *Provided*, That the stipulation by which the Chippewas of Lake Superior relinquishing their right to land west of the boundary-line shall not apply to the Bois Forte band who are parties to this treaty.

ARTICLE 13. This treaty shall be obligatory on the contracting parties, as soon as the same shall be ratified by the President and Senate of the United States.

In testimony whereof, the said Henry C. Gilbert, and the said David B. Herriman, commissioners as aforesaid, and the under-

signed chiefs and headmen of the Chippewas of Lake Superior and the Mississippi, have hereunto set their hands and seals, at the place aforesaid, this thirtieth day of September, one thousand eight hundred and fifty-four.

Henry C. Gilbert,
David B. Herriman,
Commissioners.

Richard M. Smith, Secretary.

La Pointe Band:

Ke-che-waish-ke, or the Buffalo, 1st chief, his x mark. [L. S.]
Chay-che-que-oh, 2d chief, his x mark. [L. S.]
A-daw-we-ge-zhick, or Each Side of the sky, 2d chief, his x mark. [L. S.]
O-ske-naw-way, or the Youth, 2d chief, his x mark. [L. S.]
Maw-caw-day-pe-nay-se, or the Black Bird, 2d chief, his x mark. [L. S.]
Naw-waw-naw-quot, headman, his x mark. [L. S.]
Ke-wain-zeence, headman, his x mark. [L. S.]
Waw-baw-ne-me-ke, or the White Thunder, 2d chief, his x mark. [L. S.]
Pay-baw-me-say, or the Soarer, 2d chief, his x mark. [L. S.]
Naw-waw-ge-waw-nose, or the Little Current, 2d chief, his x mark. [L. S.]
Maw-caw-day-waw-quot, or the Black Cloud, 2d chief, his x mark. [L. S.]
Me-she-naw-way, or the Disciple, 2d chief, his x mark. [L. S.]
Key-me-waw-naw-um, headman, his x mark. [L. S.]
She-gog headman, his x mark. [L. S.]

Ontonagon Band:

O-cun-de-cun, or the Buoy, 1st chief, his x mark. [L. S.]
Waw-say-ge-zhick, or the Clear Sky, 2d chief, his x mark. [L. S.]
Keesh-ke-taw-wug, headman, his x mark. [L. S.]

L'Anse Band:

David King, 1st chief, his x mark. [L. S.]
John Southwind, headman, his x mark. [L. S.]
Peter Marksman, headman, his x mark. [L. S.]
Naw-taw-me-ge-zhick, or the First Sky, 2d chief, his x mark. [L. S.]
Aw-se-neece, headman, his x mark. [L. S.]

Vieux De Sert Band:

May-dway-aw-she, 1st chief, his x mark. [L. S.]
Posh-quay-gin, or the Leather, 2d chief, his x mark. [L. S.]

Grand Portage Band:

Shaw-gaw-naw-sheence, or the Little Englishman, 1st chief, his x mark. [L. S.]
May-mosh-caw-wosh, headman, his x mark. [L. S.]
Aw-de-konse, or the Little Reindeer, 2d chief, his x mark. [L. S.]
Way-we-ge-wam, headman, his x mark. [L. S.]

Fond Du Lac Band:

Shing-goope, or the Balsom, 1st chief, his x mark. [L. S.]
Mawn-go-sit, or the Loon's Foot, 2d chief, his x mark. [L. S.]
May-quaw-me-we-ge-zhick, headman, his x mark. [L. S.]
Keesh-kawk, headman, his x mark. [L. S.]
Caw-taw-waw-be-day, headman, his x mark. [L. S.]
O-saw-gee, headman, his x mark. [L. S.]
Ke-che-aw-ke-wain-ze, headman, his x mark. [L. S.]
Naw-gaw-nub, or the Foremost Sitter, 2d chief, his x mark. [L. S.]
Ain-ne-maw-sung, 2d chief, his x mark. [L. S.]
Naw-aw-bun-way, headman, his x mark. [L. S.]
Wain-ge-maw-tub, headman, his x mark. [L. S.]
Aw-ke-wain-zeence, headman, his x mark. [L. S.]
Shay-way-be-nay-se, headman, his x mark. [L. S.]
Paw-pe-oh, headman, his x mark. [L. S.]

Lac Court Oreille Band:

Aw-ke-wain-ze, or the Old Man, 1st chief, his x mark. [L. S.]
Key-no-zhance, or the Little Jack Fish, 1st chief, his x mark. [L. S.]
Key-che-pe-nay-se, or the Big Bird, 2d chief, his x mark. [L. S.]
Ke-che-waw-be-shay-she, or the Big Martin, 2d chief, his x mark. [L. S.]

Waw-be-shay-sheence, headman, his x mark. [L. S.]
Quay-quay-cub, headman, his x mark. [L. S.]
Shaw-waw-no-me-tay, headman, his x mark. [L. S.]
Nay-naw-ong-gay-be, or the Dressing Bird, 1st chief, his x mark. [L. S.]
O-zhaw-waw-sco-ge-zhick, or the Blue Sky, 2d chief, his x mark. [L. S.]
I-yaw-banse, or the Little Buck, 2d chief, his x mark. [L. S.]
Ke-che-e-nin-ne, headman, his x mark. [L. S.]
Haw-daw-gaw-me, headman, his x mark. [L. S.]
Way-me-te-go-she, headman, his x mark. [L. S.]
Pay-me-ge-wung, headman, his x mark. [L. S.]

Lac Du Flambeau Band:

Aw-mo-se, or the Wasp, 1st chief, his x mark. [L. S.]
Ke-nish-te-no, 2d chief, his x mark. [L. S.]
Me-gee-see, or the Eagle, 2d chief, his x mark. [L. S.]
Kay-kay-co-gwaw-nay-aw-she, headman, his x mark. [L. S.]
O-che-chog, headman, his x mark. [L. S.]
Nay-she-kay-gwaw-nay-be, headman, his x mark. [L. S.]
O-scaw-bay-wis, or the Waiter, 1st chief, his x mark. [L. S.]
Que-we-zance, or the White Fish, 2d chief, his x mark. [L. S.]
Ne-gig, or the Otter, 2d chief, his x mark. [L. S.]
Nay-waw-che-ge-ghick-may-be, headman, his x mark. [L. S.]
Quay-quay-ke-cah, headman, his x mark. [L. S.]

Bois Forte Band:

Kay-baish-caw-daw-way, or Clear Round the Prairie, 1st chief, his x mark. [L. S.]
Way-zaw-we-ge-zhick-way-sking, headman, his x mark. [L. S.]
O-saw-we-pe-nay-she, headman, his x mark. [L. S.]

The Mississippi Bands:

Que-we-san-se, or Hole in the Day, head chief, his x mark. [L. S.]
Caw-nawn-daw-waw-win-zo, or the Berry Hunter, 1st chief, his x mark. [L. S.]
Waw-bow-jieg, or the White Fisher, 2d chief, his x mark. [L. S.]
Ot-taw-waw, 2d chief, his x mark. [L. S.]
Que-we-zhan-cis, or the Bad Boy, 2d chief, his x mark. [L. S.]
Bye-a-jick, or the Lone Man, 2d chief, his x mark. [L. S.]
I-yaw-shaw-way-ge-zhick, or the Crossing Sky, 2d chief, his x mark. [L. S.]
Maw-caw-day, or the Bear's Heart, 2d chief, his x mark. [L. S.]
Ke-way-de-no-go-nay-be, or the Northern Feather, 2d chief, his x mark. [L. S.]
Me-squaw-dace, headman, his x mark. [L. S.]
Naw-gaw-ne-gaw-bo, headman, his x mark. [L. S.]
Wawm-be-de-yea, headman, his x mark. [L. S.]
Waish-key, headman, his x mark. [L. S.]
Caw-way-caw-me-ge-skung, headman, his x mark. [L. S.]
My-yaw-ge-way-we-dunk, or the One who carries the Voice, 2d chief, his x mark. [L. S.]

John F. Godfroy,
Geo. Johnston,
S. A. Marvin,
Louis Codot, } Interpreters.
Paul H. Beaulieu,
Henry Blatchford,
Peter Floy,

## Executed in the presence of—

Henry M. Rice,
J. W. Lynde,
G. D. Williams,
B. H. Connor,
E. W. Muldough,
Richard Godfroy,
D. S. Cash,
H. H. McCullough,
E. Smith Lee,
Wm. E. Vantassel,
L. H. Wheeler.

## ADDENDUM TO RULE 29.1 LIST

## EXXON CORPORATION

**Affiliates and Subsidiaries—Not Wholly Owned**
**(February 1994)**

151742 Canada Inc.
165550 Canada Limited
172965 Canada Limited
177003 Canada Inc.
2849518 Canada Limited
571269 Alberta Limited
571270 Alberta Limited
AGA Progas a.s
AT&S Exploration Ltd.
Abu Dhabi Petroleum Company Limited
Ace Polymer Co., Ltd.
Acquifund Resources Limited
Aditivos Orinoco, C.A.
Adria-Wien Pipeline Gesellschaft mit beschrankter Haftung
Advanced Elastomer Systems Do Brasil Ltda.
Advanced Elastomer Systems Japan Limited
Advanced Elastomer Systems Limited
Advanced Elastomer Systems Marketing Pte. Ltd.
Advanced Elastomer Systems NV/SA
Advanced Elastomer Systems Singapore Pte. Ltd.
Advanced Elastomer Systems, Canada, Inc.
Advanced Elastomer Systems, Inc.
Advanced Elastomer Systems, L.P.
Air Tankdienst Koeln GbR
Aircraft Fuel Supply B. V.
Al-Jubail Petrochemical Company
Alberta Products Pipe Line Ltd.
Alyeska Pipeline Service Company

AquaAir Environmental, Inc.
Aramco Services Company
Asakawa Sekiyu K.K.
Awaji Gas Nenryo Kabushiki Kaisha
Azuma Sekiyu K.K.
B.W.O.C., Inc.
BEB Erdgas und Erdoel GmbH, Hannover
BRIGITTA Erdgas und Erdoel GmbH, Hannover
Bangkok Aviation Fuel Services Limited
Banshu Ekika Gas K.K.
Bayerische Erdoelleitung G.m.b.H.
Beaverhill Resources Limited
Brickwood Holdings Pty. Ltd.
Bryan Austin Chalk Operating Committee, Inc.
Bryan Woodbine Gathering, Inc.
Canadian Reserve Oil & Gas Ltd.
Cascade Fertilizers (1990) Limited
Castle Peak Power Company Limited
Changi Airport Fuel Hydrant Installation Pte. Ltd.
Changi Into-Plane Services (Pte) Ltd.
Chuo Sekiyu Hanbai K.K.
Clermont Coal Mines Limited
Comcor Chemicals Limited
Compagnie Industrielle des Polyethylenes de Normandie, GIE
Compania Minera Disputada de Las Condes S.A.
Comptoir Auxiliare du Petrole
Comptoir Oyonnaxien des Combustibles (C.O.C.)
Computer Centrum Groningen B.V.
Copim St. Lawrence Ltd.
Crandon Mining Company, a Wisconsin partnership
Cynthia Gas Gathering Company Limited
DFTG Deutsche Fluessigerdgas Terminal GmbH
Daihatsu Sekiyu K.K.
Daito Gas K.K.
Depot Petrolier du Gresivaudan

Depots Petroliers de la Corse
Depots de Petrole Cotiers
Deudan-Holding GmbH
Deutsche Advanced Elastomer Systems GmbH
Deutsche Erdgas Transport G.m.b.H.
Deutsche Transalpine Oelleitung G.m.b.H.
Devon Estates Limited
Dexco Polymers (General Partnership)
Disma S.r.l.
Dixie Pipeline Company
Dunbar Oil Ltd.
E S F Limited
ESSO OIL Tankstellen Gesellschaft m.b.H.
ETD Tankdienst Gesellschaft Duesseldorf GbR
Eagle Kenso K.K.
Eagle Reinsurance Co. Ltd.
East Texas Salt Water Disposal Company
Eiko Sekiyu K.K.
Elwerath Erdgas und Erdoel GmbH, Hannover
Elwerath Erdoel und Erdgas AG
Emirates National Chemicals Company Ltd.
Emori Sekiyu K.K.
Emsland-Erdoelleitung G.m.b.H.
Emulsions de Feyzin
Emulsions du Dauphine
Energie Marketing Service GmbH
Enterprise Housing Partners 1992 Limited Partnership
Entrepot Petrolier de Mulhouse (E.P.M.)
Entrepot Petrolier de l'Aveyron (E.P.A.)
Erdgas-Verkaufs-Gesellschaft m.b.H.
Erdoel-Raffinerie Deurag-Nerag GmbH
Esso (Overseas) Pension Trust Limited
Esso Energie G.I.E.
Esso Exploration and Production Angola Inc.
Esso Exploration and Production Ireland Limited
Esso Lub´ Services

Esso Malaysia Berhad
Esso Raffinage S.A.F.
Esso Resources Properties Inc.
Esso Societe Anonyme Francaise
Esso Standard Thailand Ltd.
Esso Standard Tunisie S. A.
Esso Technologies et Services (E.T.S.)
Etablissements Cloarec
Exxon Asset Funding Company
Exxon Asset Management Company
Exxon Chemical Asset Management Partnership
Exxon Chemical France
Exxon Chemical Paraffins Limited
Exxon Chemical Polymeres SNC
Exxon Mobile Bay Partnership
Exxon de Colombia S.A.
F.T. Giken Kabushiki Kaisha
Federated Pipe Lines Ltd.
Ferngas Nordbayern G.m.b.H.
Ferngas Salzgitter GmbH
Fernkaelte Geschaeftsstadt Nord G.b.R.
Flughafen Schwechat Hydranten-Gesellschaft
Fuji Kogyo K.K.
Full Cycle Plastics Pty. Ltd.
G16a (Groep) B.V.
Gasunie Engineering B.V.
Gasunie Warmte/Kracht Emmen B.V.
General Bussan K.K.
General Highway K.K.
General Petrochemical Industries Limited
General Sekiyu K.K.
General Sekiyu Okinawa Hanbai K.K.
General Sekiyu Overseas, Ltd.
General Shipping Co. Ltd.
General Unyu Kabushiki Kaisha

Geobutane - Lavera
Gewerkschaft Brassert Erdoel und Erdgas GmbH
Gewerkschaft Gute Hoffnung Erdgas und Erdoel GmbH
Gewerkschaft Kuechenberg Erdgas und Erdoel GmbH
Glen Park Gas Pipe Line Company Limited
Grande Ecaille Land Company, Inc.
Groupement Immobilier Petrolier
Groupement Petrolier Aviation
Groupement Petrolier de Nantes (G.P.N.)
Groupement Petrolier de Saint-Pierre des Corps (G.P.S.P.C.)
Groupement Petrolier de la Cote d'Azur
Groupement Petrolier du Finistere G.I.E.
Groupement Petrolier du Val-de-Marne (G.P.V.M.)
Groupement d'Exploitation du Depot de Reception de Chennevie
Guangzhou Esso Petroleum Service Company
Hambrecht & Quist Environmental Technology
Hamburger Gaswerke GmbH
Hannoversche Erdoelleitungs-G.m.b.H.
Hanshin Kyowa Sekiyu K.K.
Heinrich Schneider Spedition GmbH
Hiroshima General Gas Juten Kabushiki Kaisha
Hoei Sekiyu K.K.
Hokkai Sanshi Co., Ltd. (Chemical)
Hokushin Bussan K.K.
Hokuyu Sekiyu K.K.
Hong Kong Pumped Storage Development Company, Limited
Houston Regional Monitoring Corporation
Hydrant Refuelling System, S.A.
Hydranten-Betriebs-Gesellschaft, G.b.R.
Hydrierwerke Poelitz Aktiengesellschaft
Imperial Oil (an Ontario Partnership)
Imperial Oil Limited/
  Imperial Oil Resources Limited
Imperial Oil Resources N.W.T. Limited
Imperial Oil Resources Ventures Limited

Imperial Oil Resources an Alberta limited partnership
Imperial Pipe Line Company, Limited, The
Inada Ekka Gas Kabushiki Kaisha
Industria Acqua Siracusana S.p.A.
Industry Promotion Enterprises Limited
Intoplane Services Company Limited
Iranian Oil Participants Limited (Iranian Consortium)
Iranian Oil Services (Holdings) Limited
Iranian Oil Services Limited
Iraq Petroleum Company, Limited
Iraq Petroleum Pensions, Limited
Japan Butyl Company Limited
Japan Coal Liquefaction Development Company, Ltd.
Jaymo SNC
Jersey Nuclear-Avco Isotopes, Inc.
K. K. Momose Shiojiri Stand
K. K. Toresen
K.K. Aizu General
K.K. Auto
K.K. Daimaru
K.K. Eastern Gas Terminal
K.K. General Sekiyu Hanbaisho
K.K. Genet
K.K. Genetech
K.K. Heian Sekiyu
K.K. Kyoei Shosha
K.K. Marugo Izumasa Shoten
K.K. Marutaka Sekiyu
K.K. Momose Sekiyu
K.K. Saidaiji Gas
K.K. Standard Sekiyu Osaka Hatsubaisho
K.K. Toko
K.K. Uwano Sekiyu Shokai
K/S Statfjord Transport A/S & Co.
KX Industries, L.P.

Kabushiki Kaisha Sankyo Plastics
Kabushiki Kaisha Serubisu
Kai Tak Refuellers Company Limited
Kansai Chuo Sekiyu K.K.
Kanto Kygnus K.K.
Karlsruhe-Stuttgart Rohrleitung Gesellschaft mbH
Kawasaki Kygnus Sekiyu Hambai Kabushiki Kaisha
Keiyo Sekiyu Hanbai K.K.
Kemcor Australia Pty. Ltd.
Kemcor Elastomers Ltd.
Kemcor Olefins Ltd.
Kemcor Plastics Pty. Ltd.
Kenya Petroleum Refineries Limited
Kibo Sekiyu Hanbai K.K.
Kimura Sekiyu Kabushiki Kaisha
Kinwa Sekiyu K.K.
Kobe Standard Sekiyu K. K.
Korea Perchem Company Limited
Kosxon Chemical Company Limited
Kowa Sekiyu K.K.
Kowloon Electricity Supply Company Limited
Kumho E.P. Rubber Co., Ltd.
Kygnus Ekika Gas Kabushiki Kaisha
Kygnus Kosan Kabushiki Kaisha
Kygnus Marketing Service K.K.
Kygnus Sekiyu K. K.
Kygnus Sekiyu Seisei Kabushiki Kaisha
Kygnus Trading Kabushiki Kaisha
Kyushu Eagle K.K.
L-Net East K.K.
L-Net West K.K.
L12A (Groep) B.V.
L12B/L15B (Groep) B.V.
L14 (Groep) B.V.
L15A (Groep) B.V.

L2 (Groep) B.V.
L5a (Groep) B.V.
LEAG Aktiengesellschaft fuer luzernisches Erdoel
Les Docks des Petroles d'Ambes
Liants Routiers de la Vallee de la Loire (LRVL)
Liants Routiers du Gard (L.R.G.)
Lilac Sekiyu Kabushiki Kaisha
Lily Sekiyu K.K.
Lithcon Petroleum International (Bahamas) Inc.
Lithcon Petroleum Taiwan Inc.
Long Beach Oil Development Company
MEGAL FINCO
MEGAL GmbH
MESBIC Financial Corporation of Houston
Maasvlakte Olie Terminal N.V.
Magota Sekiyu K.K.
Mainline Pipelines Limited
Malaysian Energy Chemical & Services Sdn Bhd
Manchester Airport Storage and Hydrant Company Limited
McCann Plastics Inc. (Chemical)
McColl-Frontenac Inc.
McColl-Frontenac Petroleum Inc./Petroliere McColl-Frontenac
Meiji Sekiyu K.K.
Metro Fuel Co. Ltd.
Mikawa Bussa[illegible] K.K.
Mitake Un[illegible] K.K.
Mittelrheinische Erdgas Transport Gesellschaft mit beschrank
Mode Wheel Property Limited
Montreal Pipe Line Limited/Les Pipe-Lines Montreal Limitee
Mount Thorley Coal Loading Limited
Mr. Lube Canada Inc.
Multi Tank Card B.V.
Mytex Polymers (General Partnership)
N. V. Nederlandse Gasunie

NAM - K 14 B.V.
NAM - K 15 B.V.
NAM - K 7 B.V.
NAM - K17 B.V.
NAM/CLOMS - K 8/K 11 B.V.
NAM/CLOMS - L 13 B.V.
NAM/MOBIL M9a B.V.
NPC Services, Inc.
Nakabayashi Sekiyu K.K.
Nansei Oil Terminal K.K.
Nansei Sekiyu Kabushiki Kaisha
Nanseki Kaihatsu K.K.
Native Venture Capital Co. Ltd.
Near East Development Corporation
Nederlandse Aardolie Maatschappij B. V.
Neptune Bulk Terminals (Canada) Ltd.
New Cure, Inc.
Newcastle Coal Shippers Pty. Limited
Nichiei Kogyo Kabushiki Kaisha
Nichimo Oil (Bermuda) Co., Ltd.
Nikko Sangyo K.K.
Nippon Unicar K.K.
Nisku Products Pipe Line Company Limited
Nissei Sekiyu Kabushiki Kaisha
Nogat B.V.
Norddeutsche Erdgas-Aufbereitungs G.m.b.H.
Norddeutsche Mineraloelwerke Stettin G.m.b.H.
Norddeutsche Erdgas Transport Gesellschaft mit beschrankte
Noroxo
Northward Developments Ltd.
OSLO Alberta Limited
Office Prive d'Assurances et de Courtages
Oil Field Chemicals Company (Saudi Arabia) Ltd.
Oil Service Company of Iran (Private Company)

Oil Spill Response Limited
Oldenburgische Erdoel Gesellschaft m.b.H.
Oleoducto de Colombia S.A.
Oleoductos Canarios, S.A.
Osaka General Gas K.K.
Osaka Kygnus K.K.
P. T. Stanvac Indonesia
P.A.C. S.A.R.L. (Pinson-Allegret-Causse)
PIMEC Inc.
Pacesetter Enterprises Limited
Pars Investment Corporation
Paxon Polymer Company, L.P.
Peninsula Electric Power Company Limited
Petroleum Services (Middle East) Limited
Petrosvibri S.A.
Pier Atlantic Limited
Pipe Line Services, Inc.
Plantation Pipe Line Company
Port-Jerome Gaz (P.J. Gaz)
Portland Pipe Line Corporation
Primaeroel GmbH
Prince William Sound Oil Spill Response Corporation
Progas Limited
Projectbureau W/K B.V.
Quadrant Gas Limited
Raffinerie du Midi S.A.R.L.
Rainbow Pipe Line Company, Ltd.
Redwater Water Disposal Company Limited
Refineria Petrolera Acajutla, S. A.
Regulus Holding (Singapore) Pte. Ltd.
Rheingas Erdgasleitungs-Gesellschaft m.b.H.
Rotterdam Antwerpen Pijpleiding (Belgie) N.V.
Rotterdam-Antwerpen Pijpleiding (Nederland) N.V.
Rubiatec Sendirian Berhad
Ruhrgas Aktiengesellschaft

S.A. du Pipeline a Produits Petroliers sur Territoire Geneve
SEAG Aktiengesellschaft fuer schweizerisches Erdoel
SERAM S.p.A.
SOVEXOIL Oil Field
Saitama Sekiyu Hanbai K.K.
Sanyo Sekiyu K.K.
Saraco S. A.
Saudi Arabian Lube Additives Company Limited
Schubert KG
Seismic Industries A/S
Senboku Oil Kikoh K.K.
Senpoku Oil Service K.K.
Servacar Ltd.
Shehtah Drilling Limited
Shimoyama Sekiyu K.K.
Shin-Nihon Yukagaku Kogyo K. K.
Shinohara Oil K.K.
Sigel Corporation
Smiley Gas Conservation Limited
Sociedad Nacional de Oleoductos Ltda.
Sociedad de Inversiones de Aviacion
Societa Italiana per l'Oleodotto Transalpino S.p.A.
Societa per Azioni Raffineria Padana Olii Minerali-SARPOM
Societe "Geomines-Caen"
Societe Anonyme "Produits Lubrifiants de Madagascar"—PROLU
Societe Anonyme de Gestion de Stocks de Securite (SAGESS)
Societe Anonyme de la Raffinerie des Antilles
Societe Anonyme des Hydrocarbures
Societe Civile de Mustapha Algerie
Societe Civile de Participation pour la Destruction des Dech
Societe Esso de Recherches et d'Exploitation Petrolieres Ess
Societe Francaise EXXON CHEMICAL
Societe Havraise de Manutention de Produits Petroliers
Societe Ivoirienne d'Operations Petroliers S.A.

Societe Malgache de Raffinage
Societe Paris-Manche
Societe Paris-Niel
Societe Reunionnaise d'Entreposage
Societe d'Etude et d'Exploitation de la Raffinerie du Tchad
Societe d'Exploitation & de Developpement d'Operations Comme
Societe d'Exploitation des Garages Les Stations Tour Eiffel
Societe de Manutention de Carburants Aviation (S.M.C.A.)
Societe de Promotion et de Financement Touristique (CARTHAGO)
Societe de la Raffinerie d'Alger
Societe des Pipe-Lines de Strasbourg
Societe des Transports Petroliers par Pipe Line
Societe du Caoutchouc Butyl (SOCABU)
Societe du Pipe Line de la Raffinerie de Lorraine
Societe du Pipe-Line Mediterranee-Rhone
Societe du Pipeline Sud-Europeen
Socony-Standard-Vacuum Oil Company (Petroleum Maatschappij)
Southern Natural Gas Development Pty. Ltd.
Spintek Systems, L.P.
Standard Kaihatsu K.K.
Standard Kosan Kabushiki Kaisha
Standard Service K.K.
Stansted Fuelling Company Limited
Statfjord Transport A/S
Stockage Geologique de Gaz de Lavera
Sueddeutsche Erdgas Transport Gesellschaft mit beschrankter
Sun East (Dublin) Company, Ltd.
Sun East Company Ltd.
Superior Disk Corporation
Syncrude Canada Ltd.
Synergistics Industries (NJ) Inc.
Synergistics Industries (TX) Inc.
Synergistics Industries Limited

TAR-Tankanlage Ruemlang AG
TBN Tanklager-Betriebsgesellschaft Nuernberg mbH
TCA Plastics Inc.
TFS Turbo Fuel Services GmbH, Hamburg
TGF Tankdienst Gesellschaft Frankfurt G.b.R.
TGM Tankdienst-Gesellschaft Muenchen GbR
TIBA Speditions GmbH
TLS Tanklager Stuttgart GmbH
Taihei Bussan K.K.
Taisei Kogyo Sekiyu Hanbai K.K.
Taketsuru Yugyo K.K.
Tankanlage A.G., Mellingen
Tanklager Altishausen A.G.
Tanklager Taegerschen AG
Tanklager-Gesellschaft Tegel G.b.R.
Tanklagergesellschaft, Koeln-Bonn G.b.R.
Tecnica Quimica Petrolera, S.A. de C.V.
Terminal Petrolier de Bordeaux (T.P.B.)
Thai Aliphatics Company Limited
Thai C-Center Company Limited
Thai Petroleum Pipeline Co., Ltd.
Thyssengas G.m.b.H.
Tohpren Co., Ltd. (Chemical)
Tojo Gas K.K.
Toko Sekiyu K.K.
Tonen Chemical Nasu Co., Ltd.
Tonen Energy International Corp.
Tonen Energy and Marine (Singapore) Pte. Ltd.
Tonen Filare Co. Ltd.
Tonen Film Company Limited
Tonen Kabushiki Kaisha
Tonen Kagaku K.K.
Tonen Properties Inc.
Tonen Sogo Service Co., Ltd.
Tonen System Plaza Kabushiki Kaisha

Tonen System Service Kabushiki Kaisha
Tonen Tanker Kabushiki Kaisha
Tonen Tapyrus Company Limited
Tonen Technology K. K.
Tonex Company Limited
Towa Compounding Co., Ltd.
Towa Sekiyu K.K.
Toyo Gas K.K.
Toyoshina Film Company, Ltd.
Trans-Northern Pipelines Inc.
Transalpine Oelleitung in Oesterreich Gesellschaft m.b.H.
Transgaz Lavera
Tsurumaru Unyu K.K.
Turkish Petroleum Company, Limited
UBAG - Unterflurbetankungsanlage Flughafen Zurich
Ulan Coal Mines Limited
United Industry Development Co., Ltd.
Van Salt Water Disposal Company
Verbundnetz Gas AG
Wako Jushi Kabushiki Kaisha
Warmtepomp Nederland B.V.
Westdeutsche Erdoelleitungs-G.m.b.H.
Westgas G.m.b.H.
Winnipeg Pipe Line Company Limited
Woodbine Marketing Co., Inc.
Worex S.N.C.
Yasaka Sekiyu K.K.
Yellowstone Pipe Line Company
Yoshimi Gas Kabushiki Kaisha
Yuai Sekiyu K.K.
Zenon Environmental Systems Inc. (ZESI)